Exhibit A16

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CONTROL

November 17, 2008

VIA Federal Express
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, 95833-4231
Attn: Chairman Dean Shelton

Re: Response to Notice of Re-Adoption of CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The La Posta Band of Mission Indians (Tribe) provides the following responses to the California Gambling Control Commission's (CGCC) re-adoption of CGCC-8.

The Tribe is deeply saddened that the CGCC has decided to re-adopt CGCC-8 despite the intense opposition and disapproval by the Tribal State Association. Additionally, the CGCC was privy to, over the course of some twenty (20) months numerous arguments against CGCC-8's implementation and adoption in various forms and CGCC-8's structural flaws. To this end the CGCC has so far failed miserably in its attempt to both justify the need for CGCC-8 and its adoption as a regulation, but most disturbing is the announced intent to promulgate CGCC-8 outside the agreed upon procedures for implementing gaming regulations in conjunction with the Tribal-State Association (Association), contained in the various versions of the Tribal-State Compact.

First, the means of re-adoption, and the CGCC's refusal to submit CGCC-8 to the Association for a vote of approval is inconsistent with the language of the 2003 Tribal-State Compact (Compact), contractual language that the Tribe agreed to with the State of California and relies upon, which specifically states:

> "Every State Gaming Agency regulation that is intended to apply to the La Posta Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the La Posta Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the La Posta tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed

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regulation, in its original or amended form, with a detailed, written response to the Association's objections." [1]

The failure of the CGCC to forward CGCC-8 to the Association following the CGCC's re-adoption is most troubling to the Tribe and smacks of both unilateralism and paternalism, and is shameful in light of the lessons learned during the State's infancy, during the early years of its dealings with Indians. If the Tribe cannot rely on the agreed upon Compact language of Section 8.4.1, in its entirety, for practical purposes the Tribe cannot reasonably rely on the State to honor *any* of its commitments or language contained within the Tribe's Compact or the various Compacts in existence.

Second, the CGCC cannot justify the need for CGCC-8. In its Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)[2], the CGCC makes various justifications for the implementation of CGCC-8, which include: the presumed vacuum in regulation left by the Colorado River Indian Tribes decision; the State Gaming Agency's Authority under the various Compacts, Applications outside Tribal Gaming, uniformity in regulations, absence of alternatives to regulation and regulatory duplication. These points are discussed in detail below.

i. The CRIT Decision

In its support of CGCC-8 the CGCC argues that the Colorado River Indian Tribes (*CRIT*) decision and a supposed "vacuum" in regulation is the chief component for the policy rational behind the implementation of CGCC-8. However, this rational is misguided and although the *CRIT* decision held that the National Indian Gaming Commission lacked the authority to promulgate or enforce Minimum Internal Control Standards for Class III gaming, under basic contract law, the decision cannot unilaterally, nor does it, alter the terms of any of the Tribal-State Compacts.[3]

The State could have addressed its MICS concerns at the time of entering its 1999 Tribal-State Compact with sixty-one (61) tribes, but it failed to do so. Additionally, in subsequent compacts, of which the Tribe is a signatory, the State also failed to include any reference to or negotiate for MICS provisions. Thus, in the absence of the State demonstrating a concern for MICS, introduction of the MICS some nine-years after signing its initial Tribal-State Compact is unjustified.[4] Moreover, the absence of any need for MICS within the last nine (9) years is telling and infers that until the CGCC's

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[1] See La Posta Tribal-State Compact at Section 8.4.1 (b); See also Section 8.4.1(a).
[2] See CGCC's Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8).
[3] See *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).
[4] As of May 2002, Mr. Monte Deer, NIGC Chairman, has issued a Memorandum Decision and Order finding that the NIGC did not have authority under the IGRA to impose MICS on Class III gaming operations, which should have placed the CGCC on notice that MICS enforcement was a issue at the time the Tribe was negotiating its Compact with the State of California.

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introduction of CGCC-8, the State believed whole heartedly that the Compact provided the Tribes with the primary responsibility over tribal gaming regulation, including MICS.

Additionally, included within its *CRIT* premise of need is that CGCC-8 is required to preserve independent oversight of Tribal MICS compliance, which will in turn increase public confidence in tribal gaming. The CGCC has not provided any evidence demonstrating a lack of independent oversight within tribal gaming, or evidence that the public lacks confidence in any of the games or devices operated by California tribes. Alternatively, the results of the Tribal Regulators Networking Group survey indicate otherwise, that the NIGC MICS remains the standard for tribal gaming operations in California, notwithstanding *CRIT*.[5] Additionally, the general public is likely unaware of the purpose or existence of MICS and to allege that public confidence will increase due to the implementation of CGCC-8 is unsupportable.

Finally, the CGCC's use of the *CRIT* decision as the basis of CGCC-8's implementation also fails to address the regulations inclusion of financial audits. The *CRIT* decision does not touch upon nor address the role assumed by the NIGC concerning financial audits nor does the decision alter and/or modify the requirement of a yearly independent financial audit as set forth under Section 8.1.8 of the Compact and Indian Gaming Regulatory Act (IGRA) at 25 U.S.C. 2710(b)(2)(C).[6] As this federal requirement remains untouched by the *CRIT* decision, there appears to be no legitimate reason for the inclusion of financial audits within CGCC-8.

ii. Legal Authority

The CGCC cites to Compact Sections 8.4.1, 8.1.8 and 7.4 as the legal authority for implementing CGCC-8. (See CGCC "Statement of Need for Adoption of Regulation regarding Minimum Internal Control Standards (CGCC-8)," dated April 6, 2007) However, none of these Sections provide the legal authority for CGCC to unilaterally impose CGCC-8 upon the Tribes outside of the agreed upon procedures set forth in Section 8 of the various compacts.

Compact Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of this regulatory adoption process is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state "so that 'rules regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0 and 8.0 shall be consistent." Thus, in the absence of complying with Section 8.4, uniformity in gaming regulations is compromised. Additionally, nowhere within the Compact does it provide the State the authority for

[5] See attached Tribal Regulators Networking Survey
[6] 25 U.S.C §2710 et seq.

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unilateral adoption of regulations or to materially alter express provisions of the Compact or render any provisions null, void or unnecessary.

Materially altering express provisions of the Compact and or interpreting it in a manner wholly inconsistent with the written Compact language is exactly what the CGCC is attempting to accomplish to justify its adoption of CGCC-8. In its October 1, 2008 Explanatory Summary of Proposed Changes to CGCC-8 Minimum Internal Control Standards (MICS)(Amended Form Dated October 1, 2008) to be Considered at the October 14, 2008 Meeting, CGCC Chief Counsel, Evelyn M. Matteucci, referenced the *Boghos v. Certain Underwriters at Loyd's of London* case in support of the proposition that the CGCC may adopt CGCC-8 outside the process set forth in the various forms of the Compact.[7] However, a review of the *Bogus* case, at footnote 1, ironically states that "where language is clear and express, it governs."[8] A review of Section 8.4 indicates there exists no ambiguity within the express written language requiring the interpretation permitted by *Bogus*, much less interpretation and/or deviation from the express and unambiguous language set forth by the various Compacts. In short, Mrs. Matteucci 's Compact interpretation and language wizardry is nothing more than a half hearted attempt to create a favorable legal interpretation and cloud the meaning of an otherwise perfectly clear regulatory approval process.

iii. Applications Outside Tribal Gaming

The CGCC admits that there presently exist no MICS provisions for any other form of gaming within the State of California. And although the State spent time and effort drafting MICS provisions for California's cardrooms, the cardroom industry and its various working groups, arrived at the conclusion that the final product revealed a lack of understanding of the purpose of MICS and how they should be applied in a cardroom environment. Moreover, the MICS provisions presented were a composite of NIGC's MICS and various other MICS statutes from other gaming states. As of the date of the February 2008, Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8 report, some five years after the states 2003 attempt to draft MICS provisions, no card room MICS provisions have been adopted.

Ironically, concerning cardroom regulation the CGCC has *plenary* authority to adopt and implement MICS upon non-tribal gaming facilities throughout California. And although cardrooms and tribal gaming facilities have similar operational requirements, namely table games operations, currency drop and count and surveillance departments, the State does not, nor has it required, card rooms to implement MICS provisions. The fact that CGCC has permitted card rooms to operate without MICS is both telling and discriminatory. It is also disturbing that the State does not act when it has *plenary* authority over a billion dollar industry and then acts to impose its will upon California's tribal gaming industry, when it lacks authority to do so.

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[7] *See Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495)
[8] *Bank of the West v. Superior Court* (1992) 2, Cal.4th 1254, 1264.

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iv. Uniformity in Regulation

The CGCC next alleges that CGCC-8 will "foster uniformity" within California's tribal gaming regulatory environment. CGCC-8 is not required to foster uniformity, because uniformity already exists. A Tribal Networking Group survey indicates that NIGC MICS remain the minimum standards for internal controls for California Indian tribes, despite the *CRIT* holding. Moreover, the fact is that Indian tribes, including California tribes, first supported the adoption of MICS to protect the integrity of Indian gaming as well as protecting tribal assets, the very heart of the purpose and policy of Indian gaming as set forth under the IGRA. Those tribes who were members of the National Indian Gaming Association (NIGA) in the 1990's initiated what was referred to as the "MICS Work Group", and tribes voluntarily offered the services of their professionals, including internal auditors, accountants, gaming commissioners, managers, attorneys, etc, in developing a model MICS to be used by gaming tribes.

This model of cooperative MICS adoption is in stark contrast to the draconian adoption of MICS outside the legal parameters of adoption included in the various Compacts and which again smacks of unilateralism and paternalism. Moreover, compact regulatory uniformity will be very difficult to accomplish given the state's penchant for negotiating compact provisions with different goals and objectives. If the state truly wanted to create uniformity in regulation, it should have continued to use the 1999 model compact as opposed to deviating from it.

If the state, after permitting uniformity to go by the wayside, wishes to advance uniformity in regulation, it may do so by requesting each tribe adopt the NIGC MICS via compact amendments, as it recently did so with four re-negotiated compacts. These compacts included a Memorandum of Agreement (MOA) whereby the tribes agreed to implement the NIGA MICS and submit to enforcement and auditing by the State Gaming Agency. Absent arms length negotiations as noted by these recent compact amendments, the unilateral adoption of CGCC-8 is unnecessary. Morover, the use of MOA's is proof that there is a viable alternative to addressing the State's MICS concerns outside of CGCC-8.

Pursuant to the terms of the Compact, the best and most appropriate approach to addressing the State's MICS concerns would be through compact negotiations with the Tribe—not through regulatory and political bureaucracy. Moreover, addressing the State's MICS concerns through an amendment of the Compact is the only true means of maintaining respect for tribal sovereignty, and is consistent with the State's established practice in dealing with other California gaming tribes. In the absence of respecting tribal sovereignty, the Tribe will have no choice but to seek all means of protecting and defending its interests from what the Tribe believes is a unilateral and unnecessary expansion of the State's regulatory role over tribal gaming through the proposed CGCC-8.

v. Alternatives to CGCC-8

Presently, California tribes are overwhelmingly opposed to CGCC-8. Additionally, as noted in the Detailed Response to Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8), seven tribes, and the California Department of Justice-Bureau of Gambling Control, provided comments opposing the CGCC's implementation of CGCC-8 in a manner that is both inconsistent with the express written provisions of the various Compacts and in a manner that is disrespectful to the tribes themselves.[9] Both the tribes and Department of Justice made suggestions varying from No CGCC-8, to individual compact amendments and/or MOA's, legislative fixes, NIGC oversight and agreements between the State, tribes and CGCC. These alternatives are telling, and demonstrate a willingness by California tribes to engage the CGCC in its MICS concerns and attempt to formulate a reasonable and acceptable means of both addressing MICS and implementing and imposing it upon themselves.

Finally, CGCC-8 provides for an unequivocal expansion of the CGCC's oversight role by impermissibly establishing State Mandated MICS—which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact. The Commission finds that CGCC-8 is unnecessary, unduly burdensome and duplicative in light of the requirements contained in the Tribe's Gaming Ordinance (Ordinance) which was last approved by the National Indian Gaming Commission (NIGC) Chairman Philip Hogan on February 5, 2007, in accordance with the Indian gaming Regulatory Act. Specifically, Section 4.17.1(a) of the NIGC approved Ordinance provides the Gaming Commission shall promulgate such regulations, policies and procedures as are necessary to carry out the orderly performance of its duties and powers, including, but not limited to, MICS at least as stringent as those issued by the NIGC (25 CFR 542). Furthermore, the Ordinance is entirely consistent with the agreed upon duties and authority granted to the Gaming Commission pursuant to Compact Section 8.1.

We respectfully urge the CGCC, to consider the above when advancing and considering the imposition of CGCC-8 upon the Tribe. We hope you reconsider your position and that the State address MICS in the only appropriate manner through —government-to-government negotiations.

Sincerely,

Gwendolyn Parada, Chairperson
La Posta Band of Mission Indians

cc: Richard Estrada, Chairman, La Posta Band of Mission Indians-Gaming Commission

[9] See Tribal and Department of Justice-Bureau of Gambling Control, correspondence, included in the CGCC's Detailed Response to Association Objectives to Minimum Internal Control Standards (MICS) (CGCC-8), Exhibits A-1-A-8.

Philip Hogen, Chairman, National Indian Gaming Commission
Jerry Brown, Attorney General, State of California
Matthew Campoy, Acting Director, Bureau of Gambling Control
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Exhibit A17

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November 17, 2008

VIA POSTAL SERVICE

Honorable Dean Shelton
Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, California 95833

Re: Elk Valley Rancheria, California's Comments to CGCC-8

Dear Mr. Shelton:

The Elk Valley Rancheria, California (the "Tribe") opposes CGCC-8 as adopted by the California Gambling Control Commission ("CGCC") on October 14, 2008.

The Tribe contends that:

- the CGCC lacks authority under Section 8.4.1 of the Tribe's 1999 Tribal-State Gaming Compact ("Compact") to unilaterally promulgate CGCC-8 without the Association's approval;
- the Compact does not authorize the CGCC to unilaterally amend the Tribe's Compact; and
- the proposed regulation is unnecessary, unduly burdensome, and unfairly discriminatory.

General Background

In the November 1998 General Election, California voters approved the Tribal Government Gaming and Economic Self-Sufficiency Act ("Proposition 5"). Proposition 5 was a state-wide initiative that proposed to legalize class III gaming by Indian tribes on Indian tribal lands pursuant to a model tribal-state gaming compact, thus eliminating the

need for the tribes to negotiate a compact with the Governor of California. The legality of Proposition 5 was challenged in the California courts. In August 1999, the California Supreme Court ruled that Proposition 5 violated Article IV, Section 19(e) of the California Constitution which prohibits the California Legislature from authorizing "casinos of the type currently operating in Nevada and New Jersey."

The following month, two actions were taken in response to the Supreme Court's ruling. First, approximately 60 of California's 107 Indian tribes signed tribal-state compacts with Governor Davis. The 1999 tribal-state compacts permit the tribes to operate class III gaming, including banked card games such as Nevada-style, high limit blackjack and slot machines. Second, the California Legislature enacted AB 1385 (Government Code § 12012.25) approving the tribal-state compacts. Finally, on March 7, 2000, California voters approved Proposition 1A, an initiative to approve an amendment adding subsection (f) to Article IV, Section 19 of the California Constitution, which reads:

> Notwithstanding subdivisions (a) and (e) [of Article IV, Section 19], and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

The Secretary of the Interior published approval of the 60 tribal-state compacts on May 16, 2000, as required by the Indian Gaming Regulatory Act ("IGRA"). *See* 65 Fed. Reg. 31189 (May 16, 2000). The Secretary published approval of the tribal-state compact for the Augustine Band of Mission Indians on July 6, 2000, and of the tribal-state compact for the Pauma Band of Mission Indians on October 19, 2000. *See* 65 Fed. Reg. 41721 (July 6, 2000); 65 Fed. Reg. 62749 (Oct. 19, 2000). The tribal-state compacts became effective upon publication of the Secretary's approval. *See* 25 USC § 2710(d)(3)(B).

The Tribe entered into a 1999 tribal-state compact (the "Compact") as described above. The Compact contains several references to the negotiated primary regulatory authority of the Tribe and to a limited, secondary inspection role for the State Gaming Agency. *See e.g.,* §§ 6.1, 7.1, 7.4, and 8.1.

"All Gaming Activities conducted under this Gaming Compact shall, at a minimum, comply with a Gaming Ordinance duly adopted by the Tribe and approved in

accordance with IGRA, and with all rules, regulations, procedures, specifications, and standards duly adopted by the Tribal Gaming Agency." Compact § 6.1.

"Notwithstanding that the Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto, subject to the following conditions." Compact § 7.4 (emphasis added).

Further, "[i]t is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein." Compact § 7.1.

Finally, "[i]n order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations or specifications governing the following subjects, and to ensure their enforcement in an effective manner."

In 1999, after years of consultation and consideration, the National Indian Gaming Commission ("NIGC") in a final published regulation promulgated "Minimum Internal Control Standards" ("MICS") governing class II and class III gaming. *See* 64 Fed.Reg. 590 (Jan. 5, 1999) (codified, as amended, at 25 CFR part 542).

The Tribe operates the Elk Valley Casino pursuant to the Compact, its NIGC-approved Gaming Ordinance, and Tribal Gaming Agency operating procedures and standards that are at least as stringent as those contained in the NIGC MICS.

In 2006, the United States Court of Appeals for the District of Columbia, affirmed a 2005 lower court ruling[1] that the NIGC lacks regulatory authority over Class III gaming, including the authority to promulgate and enforce the MICS. *See Colorado River Indian Tribes v. National Indian Gaming Commission*, 466 F.3d 134 (DC Cir. 2006) (the "CRIT decision").

[1] *Colorado River Indian Tribes v. National Indian Gaming Commission*, 383 F.Supp.2d 123 (D.D.C. 2005).

In April 2008 the Tribe amended its Gaming Ordinance to expressly authorize the NIGC to enforce the MICS with regard to the Elk Valley Casino. The NIGC approved the Tribe's amended Gaming Ordinance in May 2008.

In July 2007, the CGCC submitted a proposed regulatory standard, CGCC-8, to the Tribal-State Association created pursuant to the Compact Section 2.2. Between July 2007 and March 2008, CGCC-8 was considered by an Association Regulatory Standards Taskforce (the "Taskforce"). As a result of the Taskforce meetings, CGCC-8 was modified by the CGCC.

The Statement of Need in support of CGCC-8 cited the changed circumstances as a result of the CRIT decision, i.e., the perceived lack of federal enforcement authority; and a perceived need for the State Gaming Agency to provide "independent oversight of Tribal MICS compliance" and "to increase public confidence that Tribal gaming meets the highest regulatory standards."[2] While the CGCC asserts that under the Compact it has "oversight" authority over Tribal regulatory compliance, nowhere in the Compact is the purported "oversight" authority expressly conferred upon the CGCC.

Notably, the CGCC did / does not cite any "exigent circumstances" requiring the promulgation of CGCC-8.

I. CGCC-8 Requires Association Approval

An agency's general rulemaking authority does not mean that the specific rule the agency promulgates is a valid exercise of that authority. Here, the CGCC does not have general rulemaking authority over tribal government gaming. Rather, the CGCC must act in concert with the tribal-state Association to promulgate regulations applicable to tribal government gaming operations. The CGCC does not have any oversight, i.e., supervision or control, authority over tribal government gaming operations.

Section 8.4.1 of the Compact provides the procedure for the State Gaming Agency to adopt regulations, subject to the Association's approval.

Section 8.4.1(a) provides:

> Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation. (Emphasis added).

[2] The CGCC has not yet implemented minimum internal control standards for California card rooms, an industry over which the CGCC has clear statutory regulatory authority.

The plain language of subdivision (a) expressly provides that a proposed CGCC regulation may not take effect unless: (1) the Association approves the regulation; and (2) the State Gaming Agency provides the Tribe an opportunity to comment on the regulation.

Except as provided in Subdivision (d), Association approval is required for any proposed regulation to be effective upon adoption by the CGCC.

Subdivision (b) provides the procedure to implement the first requirement in subdivision (a), i.e., Association approval. The State Gaming Agency must submit a proposed regulation to the Association for consideration prior to submission of such regulation to a tribe for comment. Subdivision (a) further provides that a proposed regulation disapproved by the Association may not be subsequently submitted to a tribe for comment unless the State Gaming Agency re-adopts the "proposed regulation" and provides a detailed written response to the Association's objections. However, subdivision (b) does not state that a proposed regulation may take effect after the State Gaming Agency re-adopts the regulation and submits it to the Tribe for comment. Thus, subdivision (b) does not provide an exception to the requirement in subdivision (a) for Association approval of the proposed regulation. It merely provides a mechanism for broader consideration by California Indian tribes.

Subdivision (c) provides procedures to implement the second requirement of subdivision (a), i.e., providing the Tribe an opportunity to comment on a proposed regulation. The State Gaming Agency must provide a tribe thirty (30) days to comment upon a proposed regulation. However, subdivision (c) is necessarily limited to proposed regulations approved by the Association because it does not expressly provide an exception to the requirement for Association approval set forth in subdivision (a).

Upon review of a tribe's comments, the State Gaming Agency is required to re-submit the proposed regulation to the Association for review and approval pursuant to subdivision (a).

The CGCC's proposed actions ignore the words "[e]xcept as provided in subdivision (d)" and fail to give effect to the plain language of the Compact. Maxims of jurisprudence provide that "an interpretation which gives effect is preferred to one which makes void." The CGCC's interpretation of subdivisions (a) and (c) fails to give effect to the express language of subdivisions (a) and (c) – contrary to law. *See* Civil Code § 3541.

The CGCC's statement of need, March 27, 2008 Fact Sheet, and statements by various representatives of the CGCC have either denied the existence of exigent circumstances or have not raised such circumstances.

Therefore, the State Gaming Agency (CGCC) is not authorized under the Compact to adopt as a final regulation CGCC-8 over the Association's objection.

II. CGCC-8 Constitutes a Unilateral Amendment of the Compact

CGCC-8 attempts to impose various regulatory requirements upon the Tribe that are inconsistent with the Compact. The Compact was negotiated between the State and numerous California Indian tribes. As discussed above, the State recognized that California Indian tribes were the proper, primary regulators of tribal government gaming. Numerous provisions of the Compact recognize that Tribal regulatory role. *See e.g.,* Compact §§ 6.0 – 8.0.

The CGCC cites sections 8.4.1, 8.1.8, and 7.4 as the basis for promulgation of CGCC-8. However, as discussed above, the CGGC's actions fail to comply with Section 8.4.1.

Section 8.1.8 does not provide any basis for promulgation of a regulation regarding Minimum Internal Control Standards. Section 8.1.8 must be read in light of the full language of Section 8.1. Sections 8.1 and 8.1.8, when read in conjunction with each other provide:

> "In order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum, rules and regulations or specifications governing the following subjects, and to ensure their enforcement in an effective manner: ... [8.1.8] [t]he conduct of an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants." (Emphasis added).

The plain language of Section 8.1.8 is not susceptible to the strained, manufactured interpretation that the CGCC seeks to impose upon the Tribe. Clearly, the Tribal Gaming Agency is required to promulgate the rules and regulations or specifications governing the conduct of an annual audit of the Gaming Operation. To the extent that the CGCC simply wants a copy of the audit to ensure compliance with the Compact, the CGCC is authorized to simply ask for it. *See* Compact § 7.4.3(a).

Section 7.4 simply provides a right of access and inspection of the "Tribe's Gaming Facility with respect to Gaming Activities and all Gaming Operation or Facility records relating thereto." It does not provide an independent right to the State Gaming Agency to promulgate a unilateral regulation over the Association's objection – or that of

the Tribe. Absent exigent circumstances, the CGCC lacks authority to override the Association's objection(s).

Section 12.0 of the Compact requires mutual written agreement by the State and the Tribe to amend the Tribe's Compact. The Tribe has not agreed to any Compact amendment and reserves its rights under the Compact to object to and engage in dispute resolution with regard to the CGCC's / State's unilateral attempt to amend the Tribe's Compact.

III. CGCC-8 is Unnecessary, Unduly Burdensome and Unfairly Discriminatory

The main provisions of CGCC-8, are derived from NIGC regulations including 25 CFR Part 542.

Based upon the Tribe's amendment of its Gaming Ordinance as described above, the NIGC provides independent federal oversight of the Tribe's Gaming Operation. Under the Tribe's amended Gaming Ordinance, the NIGC may enforce the MICS against the Tribe. Further, the Tribe must submit an annual Agreed-Upon Procedures audit to the NIGC in addition to its annual financial audit. Therefore, CGCC-8 as an additional protective measure to protect the integrity of gaming and the Tribe's compliance with its Compact is duplicative and unnecessary.

The Compact requires that the Tribe adopt minimum, rules and regulations or specifications with regard to the various subjects listed in Section 8.1. The NIGC MICS were effective at the time of the Compact and the Tribe adopted and complies with the NIGC MICS. The CGCC has failed to demonstrate any general or specific need for CGCC-8. Further, the Tribe has ensured that the NIGC MICS continue to be enforceable by the NIGC as against the Tribe through the amendment of the Tribe's Gaming Ordinance.

The IGRA requires that Indian tribes engage in gaming pursuant to the IGRA conduct annual financial audits and submit those audits to the NIGC within 120 days of the close of the Gaming Operation's fiscal year. *See* 25 USC § 2710(b)(2)(C); 25 CFR § 571.12[3]; and Tribe's Gaming Ordinance. Likewise, federal regulations require an agreed upon procedures audit. *See* 25 CFR § 542.3(f).

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[3] A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each gaming operation on Indian lands. Such financial statements shall be prepared in accordance with generally accepted accounting principles (GAAP) and the audit(s) shall be conducted in accordance with generally accepted auditing standards. Audit(s) of the gaming operation required under this section may be conducted in conjunction with any other independent audit of the tribe, provided that the requirements of this chapter are met.

Therefore, the Tribe already complies with the IGRA and NIGC MICS – the same minimum standard that the CGCC seeks to impose via regulation. As such standard is already required by the Compact, it is unnecessary to adopt CGCC-8.

Further, the implementation of CGCC-8 creates duplication. The Tribe may be subject to separate and different regulatory enforcement schemes by the NIGC and the State Gaming Agency. In substance, those enforcement schemes will be duplicative of the regulatory enforcement that is already successfully carried out by the Tribe and the NIGC in accordance with federal law.

To the extent that CGCC-8 requires new or additional books, records, or other documentation, the regulation is unduly burdensome and inconsistent with the State Gaming Agency's authority as the Tribe is the primary regulatory authority that establishes the rules and regulations pursuant to the jointly negotiated Compact. As stated above, to the extent that the CGCC-8 requires the Tribe to duplicate its efforts, e.g., undergo two separate agreed upon procedures audits, CGCC-8 is duplicative.

Finally, the Tribe understands that the CGCC has attempted to justify the promulgation of CGCC-8 on the basis that it is needed to generally account for Revenue Sharing Trust Fund ("RSTF") payments and Special Distribution Fund ("SDF") payments. On this subject, the issues must be addressed with individual tribes and cannot properly be addressed by a regulation that does not account for the individual circumstances present throughout the State.

The Tribe does not contribute to the RSTF or the SDF. As such, no reason exists for the CGCC to review the Tribe's annual financial audit. The Tribe does not contribute a percentage of its "net win" to the SDF. Although the Tribe receives payments from the RSTF, payment of such fees by qualified California Indian tribes is based upon flat fee payments and is not derived from net win.

Review of the Tribe's annual financial audit is not necessary to determine whether the Tribe made requisite RSTF payments. Such information can be confirmed by the CGCC's performance of a floor count of operational gaming devices, review of the quarterly certifications submitted by California Indian tribes, including the Tribe, and comparing such information with the amount of RSTF payments that the State received from a qualified tribe. Such information may be further corroborated by comparison to the number of individual gaming device licenses that a tribe obtains from the State.

Reservation of Rights

The Tribe hereby reserves all of its rights provided under the Compact and at law or in equity to raise additional arguments regarding CGCC-8.

Conclusion

The Elk Valley Rancheria, California supports strong regulation at tribal casinos. We have adopted the NIGC MICS, which the Elk Valley Tribal Gaming Commission monitors and enforces. Further, the Tribe has amended its Gaming Ordinance to ensure that there is federal oversight and enforcement of the MICS by the National Indian Gaming Commission.

The Tribe's 1999 tribal-state compact provides a carefully balanced and negotiated approach to regulation of the Tribe's tribal government gaming facility. CGCC-8 would upset that balance and constitutes an amendment to the Tribe's Compact.

Based upon the foregoing, the Elk Valley Rancheria, California requests that the California Gambling Control Commission not adopt CGCC-8 as a final regulation applicable to the Tribe's Elk Valley Casino (or any other California tribal government gaming operation) over the objection of the Association and numerous California Indian tribes.

Sincerely,

Dale A. Miller

Dale A. Miller
Chairman

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Exhibit A18

November 17, 2008

2008 NOV 19 AM 11:29

VIA U.S. MAIL

CONTROL

California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, 95833-4231
Attn: Chairman Dean Shelton

Re: Re-Adoption of CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The Big Valley Band of Pomo Indians (Tribe) provides the following responses to the California Gambling Control Commission's (CGCC) re-adoption of proposed uniform CGCC-8.

The Tribe is greatly concerned that the CGCC has decided to re-adopt CGCC-8 despite the overwhelming opposition and disapproval by the Tribal State Association after a very lengthy review period. Specifically, the CGCC was privy to, over the course of some twenty (20) months, numerous arguments against CGCC-8's implementation and adoption in various forms and CGCC-8's structural flaws. To this end the CGCC has so far failed miserably in its attempt to both justify the need for CGCC-8 and its re-adoption as a regulation, but most disturbing is the announced intent to promulgate CGCC-8 outside the agreed upon procedures for implementing gaming regulations in conjunction with the Tribal-State Association (Association), contained in the various versions of the Tribal-State Compact.

First, the means of re-adoption and the CGCC's refusal to submit CGCC-8 to the Association for a vote of approval is inconsistent with the language of the 1999 Tribal-State Compact (Compact), contractual language that the Tribe agreed to with the State of California and relies upon, which specifically states:

> "...no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation..." [1]

[1] See Tribal-State Compact at Section 8.4.1 (a).

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This simple two-part process could not be clearer. However, the apparent failure of the CGCC to forward the re-adopted version of CGCC-8 to the Association following the CGCC's re-adoption for the requisite approval is most troubling to the Tribe and smacks of both unilateralism and paternalism, and is shameful in light of the lessons learned during the State's infancy, during the State's early years of its dealings with Indians.[2] If the Tribe cannot rely on the agreed upon Compact language of Section 8.4.1, in its entirety, for practical purposes the Tribe cannot reasonably rely on the State to honor *any* of its commitments or language contained within the Tribe's Compact or the various Compacts in existence.

Second, the CGCC cannot justify the need for CGCC-8. In its Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)[3], the CGCC makes various justifications for the implementation of CGCC-8, which include: the presumed vacuum in regulation left by the Colorado River Indian Tribes decision; the State Gaming Agency's Authority under the various Compacts, Applications outside Tribal Gaming, uniformity in regulations, absence of alternatives to regulation and regulatory duplication. These points are discussed in detail below.

i. The CRIT Decision

In its support of CGCC-8 the CGCC argues that the Colorado River Indian Tribes (*CRIT*) decision and a supposed "vacuum" in regulation is the chief component for the policy rational behind the implementation of CGCC-8. However, this rational is misguided and although the *CRIT* decision held that the National Indian Gaming Commission (NIGC) lacked the authority to promulgate or enforce Minimum Internal Control Standards for Class III gaming, under basic contract law, the decision cannot unilaterally, nor does it, alter the terms of any of the Tribal-State Compacts.[4]

The State could have addressed its MICS concerns at the time of entering its 1999 Tribal-State Compact with sixty-one (61) tribes, but it failed to do so. Additionally, in subsequent compacts, the State also failed to include any reference to or negotiate for MICS provisions until 2006—and in doing so, MICS was included as a negotiated bargained for exchange. Thus, in the absence of the State demonstrating a concern for MICS, introduction of the CGCC-8, some nine-years after signing its initial Tribal-State Compact, is

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[2] It should be noted that when the Association previously disapproved a different proposed regulation, specifically CGCC-7, consistent with Section 8.4.1, the CGCC revised the disapproved regulation addressing noted deficiencies, re-adopted the revised version and then appropriately presented CGCC-7 back to the Association for approval prior to being sent to the tribes for comment and ultimately implemented.

[3] See CGCC's Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8).

[4] See *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).

unjustified. Moreover, the absence of any need for a State mandated MICS within the last nine (9) years is telling and infers that until the CGCC's introduction of CGCC-8, the State believed whole heartedly that the Compact provided the Tribes with the primary responsibility over tribal gaming regulation, including MICS.

Additionally, included within its *CRIT* premise of need is that CGCC-8 is required to preserve independent oversight of Tribal MICS compliance, which will in turn increase public confidence in tribal gaming. The CGCC has not provided any evidence demonstrating a lack of independent oversight within tribal gaming, or evidence that the public lacks confidence in any of the games or devices operated by California tribes. Alternatively, the results of the Tribal Regulators Networking Group survey indicate otherwise, that the NIGC's federal MICS remains the standard for tribal gaming operations in California, notwithstanding *CRIT*.[5] Additionally, the general public is likely unaware of the purpose or existence of MICS and to allege that public confidence will increase due to the implementation of CGCC-8 is unsupportable.

Finally, the CGCC's use of the *CRIT* decision as the basis of CGCC-8's implementation also fails to address the regulations inclusion of financial audits. The *CRIT* decision does not touch upon nor address the role assumed by the NIGC concerning financial audits nor does the decision alter and/or modify the requirement of a yearly independent financial audit as set forth under Section 8.1.8 of the Compact and Indian Gaming Regulatory Act (IGRA) at 25 U.S.C. 2710(b)(2)(C).[6] As this federal requirement remains untouched by the *CRIT* decision, there appears to be no legitimate reason for the inclusion of financial audits within CGCC-8.

ii. Legal Authority

The CGCC cites to Compact Sections 8.4.1, 8.1.8 and 7.4 as the legal authority for implementing CGCC-8. (See CGCC "Statement of Need for Adoption of Regulation regarding Minimum Internal Control Standards (CGCC-8)," dated April 6, 2007). However, none of these Sections provide any legal authority for CGCC to unilaterally impose CGCC-8 upon the Tribes outside of the agreed upon procedures set forth in Section 8 of the various compacts.

Compact Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of this regulatory adoption process is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state "so that 'rules regulations, standards, specifications, and procedures

[5] See attached Tribal Regulators Networking Survey
[6] 25 U.S.C §2710 et seq.

of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0 and 8.0 shall be consistent." Thus, in the absence of complying with Section 8.4, uniformity in gaming regulations is compromised. Additionally, nowhere within the Compact does it provide the State the authority for unilateral adoption of regulations or to materially alter express provisions of the Compact or render any provisions null, void or unnecessary.

Materially altering express provisions of the Compact and or interpreting it in a manner wholly inconsistent with the written Compact language is exactly what the CGCC is attempting to accomplish to justify its adoption of CGCC-8. In its October 1, 2008 Explanatory Summary of Proposed Changes to CGCC-8 Minimum Internal Control Standards (MICS)(Amended Form Dated October 1, 2008) to be Considered at the October 14, 2008 Meeting, CGCC Chief Counsel, Evelyn M. Matteucci, referenced the *Boghos v. Certain Underwriters at Lloyd's of London* case in support of the proposition that the CGCC may adopt CGCC-8 outside the process set forth in the various forms of the Compact.[7] However, a review of the *Bogus* case, at footnote 1, ironically states that "where language is clear and express, it governs."[8] A review of Section 8.4 indicates there exists no ambiguity within the express written language requiring the interpretation permitted by *Bogus*, much less interpretation and/or deviation from the express and unambiguous language set forth by the various Compacts. In short, Mrs. Matteucci 's Compact interpretation and language wizardry is nothing more than a half hearted attempt to create a favorable legal interpretation and cloud the meaning of an otherwise perfectly clear regulatory approval process.

iii. Applications Outside Tribal Gaming

The CGCC readily admits that there presently exist no MICS provisions for any other form of gaming within the State of California. And although the State spent time and effort drafting MICS provisions for California's cardrooms, the cardroom industry and its various working groups, arrived at the conclusion that the final product revealed a lack of understanding of the purpose of MICS and how they should be applied in a cardroom environment. Moreover, the MICS provisions presented were a composite of NIGC's MICS and various other MICS statutes from other gaming states. As of the date of the February 2008, Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8 report, some five years after the State's 2003 attempt to draft MICS provisions, no cardroom MICS provisions have been adopted.

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[7] *See Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495)
[8] *Bank of the West v. Superior Court* (1992) 2, Cal.4th 1254, 1264.

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Ironically, concerning cardroom regulation the CGCC has *plenary* authority to adopt and implement MICS upon non-tribal gaming facilities throughout California. And although cardrooms and tribal gaming facilities have similar operational requirements, namely table games operations, currency drop and count and surveillance departments, the State does not, nor has it required, card rooms to implement MICS provisions. The fact that CGCC has permitted cardrooms to operate without MICS is both telling and discriminatory. It is also disturbing that the State does not act when it has *plenary* authority over a billion dollar cardroom industry, but affirmatively acts to impose its will upon California's tribal gaming industry, when it lacks the authority to do so.

iv. Uniformity in Regulation

The CGCC next alleges that CGCC-8 will "foster uniformity" within California's tribal gaming regulatory environment. CGCC-8 is not required to foster uniformity, because uniformity already exists. A Tribal Networking Group survey indicates that NIGC MICS remain the minimum standards for internal controls for California Indian tribes, despite the *CRIT* holding. Moreover, the fact is that Indian tribes, including California tribes, first supported the adoption of MICS to protect the integrity of Indian gaming as well as protecting tribal assets, the very heart of the purpose and policy of Indian gaming as set forth under the IGRA. Those tribes who were members of the National Indian Gaming Association (NIGA) in the 1990's initiated what was referred to as the "MICS Work Group", and tribes voluntarily offered the services of their professionals, including internal auditors, accountants, gaming commissioners, managers, attorneys, etc., in developing a model MICS to be used by gaming tribes.

This model of cooperative MICS adoption is in stark contrast to the draconian adoption of MICS outside the legal parameters of adoption included in the various Compacts and which again smacks of unilateralism and paternalism. Moreover, compact regulatory uniformity will be very difficult to accomplish given the State's penchant for negotiating compact provisions with different goals and objectives. If the State truly wanted to create uniformity in regulation, it should have continued to use the 1999 model compact as opposed to deviating from it.

If the State, after permitting uniformity to go by the wayside, wishes to advance uniformity in regulation, it may do so by requesting each tribe adopt the NIGC MICS via compact amendments, as it recently did so with four re-negotiated compacts. These compacts included a Memorandum of Agreement (MOA) whereby the tribes agreed to implement the NIGC MICS and submit to enforcement and auditing by the State Gaming Agency. Absent arms length negotiations as noted by these recent compact amendments, the unilateral adoption of CGCC-8 is unnecessary. Moreover,

the use of MOA's is proof that there is a viable alternative to addressing the State's MICS concerns outside of CGCC-8.

Pursuant to the terms of the Compact, the best and most appropriate approach to addressing the State's MICS concerns would be through compact negotiations with the Tribe—not through regulatory and political bureaucracy. Moreover, addressing the State's MICS concerns through an amendment of the Compact is the only true means of maintaining respect for tribal sovereignty, and is consistent with the State's established practice in dealing with other California gaming tribes. In the absence of respecting tribal sovereignty, the Tribe will have no choice but to seek all means of protecting and defending its interests from what the Tribe believes is a unilateral and unnecessary expansion of the State's regulatory role over tribal gaming through the proposed CGCC-8.

v. Alternatives to CGCC-8

Presently, California tribes are overwhelmingly opposed to CGCC-8. Additionally, as noted in the Detailed Response to Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8), seven tribes, and the California Department of Justice-Bureau of Gambling Control, provided comments opposing the CGCC's implementation of CGCC-8 in a manner that is both inconsistent with the express written provisions of the various Compacts and in a manner that is disrespectful to the tribes themselves.[9] Both the tribes and Department of Justice made suggestions varying from No CGCC-8, to individual compact amendments and/or MOA's, legislative fixes, NIGC oversight and agreements between the State, tribes and CGCC. These alternatives are telling, and demonstrate a willingness by California tribes to engage the CGCC in its MICS concerns and attempt to formulate a reasonable and acceptable means of both addressing MICS and implementing and imposing it upon themselves.

Finally, CGCC-8 provides for an unequivocal expansion of the CGCC's oversight role by impermissibly establishing State mandated MICS—which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact. Moreover, the Tribe finds that CGCC-8 is entirely unnecessary, unduly burdensome and duplicative in light of the requirements contained in the Tribe's Gaming Ordinance (Ordinance) as approved by the National Indian Gaming Commission (NIGC) on August 8, 2002, in accordance with the Indian gaming Regulatory Act. Specifically, the Tribe's Ordinance provides that the Tribe's Gaming Commission shall promulgate such regulations necessary to implement the Ordinance which is entirely consistent with the

[9] See Tribal and Department of Justice-Bureau of Gambling Control, correspondence, included in the CGCC's Detailed Response to Association Objectives to Minimum Internal Control Standards (MICS) (CGCC-8), Exhibits A-1-A-8.

agreed upon duties and authority granted to the Tribe's Gaming Commission pursuant to Compact Section 8.1. Furthermore, the Tribe's Gaming Commission has indeed established regulations—including tribal MICS at least as stringent as those issued by the NIGC (25 CFR 542). Furthermore, the Ordinance is entirely consistent with the agreed upon duties and authority granted to the Gaming Commission pursuant to Compact Section 8.1.

The Tribe therefore opposes CGCC-8 and additionally incorporates by reference those deficiencies and objections noted in the February 2008, Association Regulatory Standards Taskforce Final Report.[10] We respectfully urge the CGCC, to consider the above when advancing and considering the imposition of CGCC-8 upon the Tribe. We hope you reconsider your position and that the State immediately change course and address MICS in the only appropriate manner—through government-to-government negotiations in accordance with the IGRA.

Sincerely,

Charmaine Markille

for Valentino Jack, Chairman
Big Valley Band of Pomo Indians

cc: Big Valley Band of Pomo Indians Gaming Commission
Philip Hogen, Chairman, National Indian Gaming Commission
Jerry Brown, Attorney General, State of California
Matthew Campoy, Acting Director, Bureau of Gambling Control
Rosette & Associates, PC

[10] See Attached February 13, 2008, Association Regulatory Standards Taskforce Final Report.

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TRIBAL ALLIANCE OF SOVEREIGN INDIAN NATIONS

A Study of Gaming Regulatory Agency Expenditures of Tribes in California

Prepared by
The Rose Institute of State and Local Government
At Claremont McKenna College
For
The Tribal Alliance of Sovereign Indian Nations

www.TASIN.org

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A Study of Gaming Regulatory Agency Expenditures of Tribes in California

Prepared by
The Rose Institute of State and Local Government
Claremont McKenna College

For
The Tribal Alliance of Sovereign Indian Nations

September 10, 2007

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The following report will provide an overview of the current regulatory status and expenditures of tribes operating casinos surveyed from members of the State of California Tribal Regulator Networking Group. This overview includes the budget numbers and the number of employees within the gaming regulatory agencies that regulate the gaming operations of the tribes in the study. We will first elaborate on the provisions of the compacts and pertinent state law to demonstrate the nature of the relationship between the sovereign tribal governments and the state and federal governments. We will then look at the tribal budgets that are allotted for the tribal gaming regulatory agencies.

The California Compacts and Pertinent State and Federal Law

As affirmed by the United States District Court of the District of Columbia in *Colorado River Indian Tribes v. National Indian Gaming Commission*, 383 F. Supp. 2d 123; 2005 U.S. Dist. LEXIS 17722, the California Compacts (and the compacts in any state) are the necessary tool to authorize Class III gaming on tribal lands and allow the state, through good-faith negotiations, to accommodate their interests in the regulation of the said gaming. Under the provisions of the Indian Gaming Regulatory Act, a federal statute passed in 1987, Class III gaming is lawful on Indian lands only if:

- The tribe has authorized such gaming by an ordinance approved by the Chairperson of the National Indian Gaming Commission (NIGC);
- The laws of the state in which gaming is to be conducted permit such gaming by any person or entity for any purpose;
- The gaming has been authorized by a tribal-state compact that has been signed by the state and the tribe, approved by the Secretary of State, and approved by the Secretary of the Interior.

Congress concluded that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity" (*Id.* at § 2701[5]). IGRA establishes three gaming classifications. *Class I* gaming consists of traditional games and is regulated exclusively by Indian tribes. *Class II* gaming includes games such as "bingo" and "pull-tabs," and *Class III* gaming includes all other forms of gaming, including casino games such as blackjack, craps and roulette, and slot machines.

In order to engage in Class III gaming, a tribe must adopt a tribal gaming ordinance that meets certain federal standards and is approved by the Chairman of the NIGC (*See* 25 U.S.C. § 2710 [2002]). Despite the decision in *Colorado River Indian Tribes v. National Indian Gaming Commission,* the NIGC continues to have substantial responsibilities over Class III gaming, including the authority to issue fines or closure orders for violation of IGRA or NIGC regulations, NIGC-approved gaming ordinances, and tribal-state compacts.

The state has a legitimate interest in the effective regulation of gaming; however, the state is banned from using the compacting process to attempt to increase its jurisdiction in Indian Country. Congress specifically blocks states from using the compacting process to extend their jurisdiction into areas not reasonably necessary for the effective regulation of Class III gaming. The compacts are not contracts between the state and private entities. Tribal-State Class III gaming compacts are agreements between the state and separate sovereign tribal governments. The compacts have the force of state, tribal, and federal law because the legislature, the tribe, and the Secretary of Interior all agree to the provisions of the compact.

On September 10, 1999, fifty-seven federally recognized tribes entered into compacts with the State of California. Each compact is a separate, independent agreement between a single tribe and the state. In March 2000, the voters of California passed Proposition 1A by an overwhelming margin, and that law now appears in the California Constitution as Article 4 Section 19(f). The Secretary of the Interior then approved the compacts as required under IGRA, and it went into effect in May 2000. That compact provides, in relevant part, as follows:

> (a) Each tribe must create a gaming regulatory agency, known in the compact as a Tribal Gaming Agency (TGA), to carry out the tribe's regulatory responsibilities (*See* Compact §§ 2.20, 6, 7).
>
> (b) The State has formed two State Gaming Agencies, including the California Gambling Control Commission and, within the California Department of Justice, the Division of Gambling Control under the Gambling Control Act (*See* Compact §§ 2.2 and 2.18).
>
> (c) The Compact requires a cooperative approach to the regulation of each Tribe's governmental gaming operation, with primary regulatory jurisdiction and responsibility vested in each Tribe.

The Compact created a negotiated regulatory framework in which each Tribal government exercises primary and significant regulatory jurisdictional rights and duties, and the State (including the Commission and Division) fulfills specifically defined oversight and other functions. Where the Compact does not expressly designate a role for the State with respect to implementing a particular procedure, regulation of that activity remains within the exclusive jurisdiction of the Tribal government, subject to IGRA.

An intergovernmental "Association" was established in the Compact for the purpose of developing regulations. The Association included a selection of California tribal and state gaming regulators, the membership of which comprises up to two representatives from each TGA of those tribes with whom the State has a gaming compact under IGRA, and up to two delegates each from the Division of Gambling Control and the California Gambling Control Commission (Compact § 2.2).

The Association has adopted a protocol for the manner in which it will conduct its approval of proposed regulations.

The tribal compacts that then-Gov. Gray Davis signed in 1999 show that while the California Gambling Control Commission has a role in gaming oversight, the tribal gaming regulatory agencies are primarily responsible for the day-to-day regulation of gaming operations. Section 7.1 of the Tribal-State Compact says,

> Sec. 7.1. On-Site Regulation. It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Section 7.4 of the same compact elaborates on the role that the State Gaming Agency should play in relation to the individual tribal gaming regulatory agencies. It says,

> [T]he Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, [and] the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto[.]

According to the language of the compacts, the tribes, rather than the California Gambling Control Commission, should be the primary arbiter and enforcer of gaming related issues and regulations.

Section 8.1.8 of the compact requires tribes to conduct "an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants."

The California Gambling Control Act provides guidelines for the California Gambling Control Commission. Sections 19810 and 19811 establish that the California Gambling Control Commission consists of five members that the governor appoints and the Senate confirms. Subsection B of Section 19811 says,

> (b) Jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments is vested in the commission.

Further sections of the California Gambling Control Act elaborate on the major aspects of gaming that the Commission should oversee, such as licensing and periodic checks on compliance of the rules specified under the compacts and the Gambling Control Act (specifically in sections 19823 and 19824). In summary, the California Gambling Control Commission's major duties under the compacts and the Gambling Control Act include licensing requirements and compliance and monitoring functions, but the tribal gaming regulatory agencies have the primary responsibility for gaming regulation. Therefore, it is important to study how the tribes are carrying out this responsibility.

The Budget of the Tribes' Gaming Regulatory Agencies: An Overview[1]

The 64 tribes that are covered in the following report have projected gaming commission annual budgets totaling $90,282,837. The tribes have a projected average annual gaming regulatory budget of $1,556,600. The regulatory budgets range from $12,000 to $4,600,000. The gaming regulatory agencies of the surveyed tribes employ approximately 1,833 employees total; the average size of each individual tribe's gaming regulatory agency is 32 employees—4 of whom, on average, have previous law enforcement experience.

	Surveyed	Projected	Average
Commission Annual Budget	$54,644,809	$90,282,837	$1,556,600
Number of Gaming Regulatory Agency Employees	1,276	1,833	32
Number of Employees With Law Enforcement Experience	107	225	4
Number of Machines	47,812	64,543	1,113
Commission Annual Budget Per Machine	$1,143	$1,399	---

The tribes represented in this report operate 64,543[2] machines in their casinos. Each tribal regulatory commission has a projected annual budget of $1,399 per machine.

The State of California and the California Gambling Control Commission have a legitimate interest in regulating gaming activity. As IGRA and the compacts point out, however, the tribal gaming regulatory agencies have the primary role in gaming regulation.

Our study shows that the tribes in California directed significant funds and energy toward this end. Moreover, it should be noted that all tribes that currently operate tribal casinos and responded to the survey reported that they did *not* eliminate their Minimum

[1] All projections are derived from the data provided by the State of California Tribal Regulator Networking Group (who conducted a survey of its membership, 46 of whom responded) to the Rose Institute of State and Local Government. The reported results are estimated using bivariate and multivariate regression models. Of the 64 tribes covered in this report, only 57 currently operate a tribal casino, with 1 opening a casino in the first half of 2008. Thus, only these 58 are taken into account in making the projections and averages. Furthermore, projected values are used when calculating averages.

[2] This figure is not a projection; rather, it is the actual number of machines operated by the 58 tribes taken into account in this study. The number was calculated by adding the number of machines listed for each tribal casino in the *Casino City's North American Gaming Almanac 2006-2007 Edition.*

Internal Control Standards (MICS) as a result of the *Colorado River Indian Tribes* decision.

Gaming Regulatory Resources: A Comparative Perspective

To provide further context in which to consider the scale of regulatory activities and resources in California, the most natural comparison is to the neighboring state of Nevada, where most forms of gaming have been legal since 1931.

	California	Nevada
Total Number of Machines	*64,543*[3]	*172,318*[4]
Number of Tribal Gaming Regulatory Agency Employees (Projected)	1,833	---
Number of State Gaming Regulatory Agency Employees (FTE)	63[5]	461[6]*
Total Gaming Regulatory Agency Employees	*1,896*	*461*
Tribal Gaming Commission Annual Budget (Projected)	$90,282,837	---
State Gambling Control Commission Annual Budget	$10,459,000[7]	$41,586,720[8]
Total Regulatory Budget	*$100,741,837*	*$41,586,720**
Number of Statewide Regulatory Employees per Machine	**0.0293758**	**0.0026579**
Statewide Regulatory Budget per Machine	**$1560.85**	**$241.34**

[3] *Casino City's North American Gaming Almanac 2006-2007 Edition.*
[4] *Casino City's Nevada Gaming Almanac 2006 Edition.*
[5] *California Gambling Control Budget*, available at: http://www.ebudget.ca.gov/pdf/GovernorsBudget/0010/0855.pdf
[6] *Nevada Gaming Control Board Budget*, available at: http://budget.state.nv.us/budget_2007_09/budget_book/2007-2009%20Executive%20Budget_GAMING%20CONTROL%20BOARD.pdf (Governor recommended number for 2007-2008.)
[7] *California Gambling Control Budget.*
[8] *Nevada Gaming Control Board Budget.* (Governor recommended number for 2007-2008.)

* Nevada casinos may have some compliance personnel that perform functions similar to those performed by tribal government operations. As these are not government expenditures (and not readily available) they are not included herein.

ASSOCIATION REGULATORY STANDARDS TASKFORCE FINAL REPORT STATEMENT OF NEED RE. CGCC-8 FEBRUARY 13, 2008

I. INTRODUCTION

The California Gambling Control Commission (the "CGCC") submitted a draft proposed regulatory standard, CGCC-8, to the Tribal-State Association (the "Association") on July 11, 2007, prior to its adoption by the CGCC. The Association, in accordance with its adopted Protocol for Submission of Proposed State Regulatory Standards to the Association (the "Protocol"), created an Association Regulatory Standards Taskforce (the "Taskforce") to review CGCC-8. The Taskforce held its first meeting on Wednesday, August 8, 2007. The CGCC then submitted a revised proposed regulation to the Taskforce on September 7, 2007. Subsequent meetings were held on September 11, 2007, November 7, 2007, and January 9, 2008. These meetings were attended by a majority of the tribal regulators and representatives from the State of California (the "State").

The purpose of the Taskforce meetings was to discuss proposed criteria and information necessary to analyze and review the proposed regulation. Pursuant to the Protocol, the Taskforce is charged with providing a Statement of Need for the proposed regulation, including the rationale for the need based upon fact or policy. The Taskforce in developing this Statement of Need may consider the following: (i) economic impact on gaming operations, including whether the proposed regulatory standards impact small operations differently than large operations; (ii) whether the standard or policy embodied by these proposed regulatory standards is or will be applied to gaming facilities other than Indian casinos, such as card rooms and race tracks; if not whether there is any disparate impact or discriminatory effect created by the proposed regulatory standards; (iii) whether the proposed regulatory standards fosters uniformity; and (iv) alternatives to the proposed regulatory standards; (v) provide a statement of legal authority; (vi) if basis for regulatory standards is factual rather than policy based, address whether the proposed regulatory standards are duplicative. See Protocol for Submission of Proposed State Regulatory Standards to the Association, Amended January 21, 2004, Section (B)(2)(b).

In accordance with these duties, the Taskforce Chairman respectfully submits this final report and Statement of Need to the Association.

II. STATEMENT OF NEED

The CGCC has cited different rationales for CGCC-8. One rationale cited in the regulation is that the *CRIT* decision[1] "changed the contours" of a basic Tribal-State Compact premise that regulatory jurisdiction lies with federal, state and tribal governments when it held that the National Indian Gaming Commission (the "NIGC") does not have the authority to promulgate or enforce Minimum Internal Control Standards ("MICS") for Class III gaming. (Section (a) of CGCC-8.)

[1] *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).

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However, the *CRIT* decision does not and cannot change the terms of the Compact. The State could have expressly addressed the inclusion of MICS in the original 1999 Compacts, but did not do so.[2] Nor was this done in subsequent amendments, as the State of Arizona did when it negotiated new Compacts with Arizona tribes in 2003. The 2003 Arizona Compacts expressly require gaming tribes in that state to implement MICS, as amended from time to time. The CGCC's attempt to adopt and enforce the NIGC MICS as statewide regulations is an improper attempt to amend the terms of the Tribal-State Compact in circumvention of section 12.1 of the Compact.

The CGCC also contends that its proposed regulation is needed "to preserve the benefits of independent oversight of Tribal MICS compliance" and "serve to increase public confidence that Tribal gaming meets the highest regulatory standards." CGCC-8, subdivision (a). However, the results of the Tribal Regulator Networking Group's survey demonstrate that the NIGC MICS remain the applicable standards for tribal gaming operations in California, notwithstanding the *CRIT* decision. Thus, the rationale that CGCC-8 is needed to maintain uniform MICS for tribal gaming operations in California is also invalid. (See also Section VI(A), (B) below, addressing the necessity of CGCC-8).

The rationale that the regulation is needed to address the *CRIT* decision also does not explain why CGCC-8 contains provisions requiring financial audits. The *CRIT* decision did not affect the role the NIGC plays with respect to financial audits or alter the existing requirements for annual external financial audits found in both section 8.1.8 of the Tribal-State Compact and Indian Gaming Regulatory Act of 1988 (the "IGRA")[3] at 25 U.S.C. § 2710(b)(2)(C). Since the regulatory scheme relating to annual financial audits remains untouched by the *CRIT* decision, there is no legitimate basis for including the financial audit provisions in CGCC-8.

A. Economic Impact on Gaming Operations

The provisions of CGCC-8 requiring adoption of the NIGC MICS and an annual "Agreed-Upon Procedures" audit would not pose a significant economic impact because, as stated above, these requirements are already enforced by Tribal Gaming Agencies. The requirement in CGCC-8 for an annual audit of the gaming operation's financial statements also does not pose a significant economic impact because this requirement is already found in the IGRA, gaming ordinances and the Tribal-State Compact.

However, the provisions of CGCC-8 authorizing the CGCC to conduct undefined "on-site compliance reviews" and requiring tribes to work with the CGCC to resolve any disputed findings of the CGCC's compliance review may pose a significant economic impact on tribal gaming operations, particularly for smaller tribal gaming operations. Costs include the staff time dedicated to producing records and escorting CGCC staff in conducting comprehensive reviews/audits in addition to the cost of audits already being performed. The unrestricted

[2] The absence of the MICS was a product of negotiations among the parties during the compacting process. See footnote 7.

[3] 25 U.S.C. § 2701 et seq.

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compliance reviews contemplated by CGCC-8 could require a tribe to devote a great deal of staff time to responding to the state auditors and their findings.[4]

B. Application to Card Rooms

The CGCC acknowledges that there are no MICS in place for non-tribal gaming facilities in California. Beginning in 2003, the State spent the better part of a year drafting MICS for the card rooms, eventually presenting them to representatives of the card rooms during a meeting in 2004. The reaction was decidedly negative as the State had not consulted with the advisory group of card room executives and attorneys, established for this very type of endeavor, during the year long drafting period and the final product revealed a concerning lack of understanding of MICS in general and how they should be applied to the card rooms. The State's MICS were a conglomeration of the NIGC' MICS and various statutes from Nevada and New Jersey. As of this report in 2008, *five years later*, no further MICS applicable to card rooms have been adopted.

CGCC-8's very existence thus represents a discriminatory approach to gaming regulation by the CGCC, which is all the more troubling because the CGCC has plenary jurisdiction to regulate non-tribal gaming facilities in California. Although the card rooms and tribal gaming facilities have in common some internal operations that inarguably require oversight – such as table games operations, currency drop and count and surveillance – the State does not require card rooms to implement MICS. Indeed, the State puts precious few requirements upon the card rooms such as a gambling license requirement, additional tables' requests and rules regarding third-party providers of proposition player services. This is *not* the case for tribal gaming operations, which have both federal and tribal oversight in addition to state oversight. The failure of the CGCC to impose MICS on non-tribal gaming facilities creates a true regulatory void and one that truly demands the State's immediate attention.

The fact that the CGCC has permitted non-tribal gaming facilities to operate without MICS for years but imposed such standards on tribal gaming operations almost immediately after the *CRIT* decision is telling. It suggests that the CGCC either ignores the fact that California tribes follow the NIGC MICS or does not respect the ability of tribal gaming agencies to enforce such standards, or both. It is disturbing that the State feels no urgency to exercise its unquestioned authority over the billion dollar a year card room industry and apparently feels compelled to impose an ill-advised and unnecessary regulation upon the tribal gaming facilities.

C. Fostering Uniformity

CGCC-8 is not needed to foster uniformity because uniformity already exists. As noted above, a Tribal Regulator Networking Group survey shows that the NIGC MICS remain the minimum standards for California tribes despite the *CRIT* decision.

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[4] In addition, the lack of experience of a newly formed agency conducting these comprehensive reviews/audits may increase the economic impacts.

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It may be a little known fact that it was primarily Indian Tribes, including California Tribes, not the States that first supported the adoption of MICS to protect the integrity of Indian Gaming as well as the assets of the Indian Tribes in a uniform manner. Those Tribes who were members of the National Indian Gaming Association (NIGA) in the 1990s initiated what was termed a "MICS Work Group," and Tribes voluntarily offered the services of their professionals including internal auditors, accountants, gaming commissioners, gaming managers, attorneys, etc. to develop a model MICS to be used by any gaming Tribes, especially those Tribes who did not have the expertise and/or resources to develop their own MICS, so that those Tribes which were just starting out would have the ability to protect the integrity of their gaming operations. This NIGA MICS were used voluntarily by Tribes for many years, until the NIGC decided that they wanted to promulgate a Federal MICS. It is a well established fact that a large portion of the first MICS promulgated as a regulation by the NIGC was based primarily upon the product of that MICS Work Group.

In any event, the goal of fostering uniformity is not necessarily one that can or should be expected given the numerous varied Tribal-State Compacts that have been negotiated since the original 1999 Compacts. With respect to the issue of MICS in particular, the four most recently negotiated Compacts include Memoranda of Agreement ("MOA") under which those tribes have agreed to implement the NIGC MICS and to submit to enforcement and auditing by the State Gaming Agency. These concessions were arrived at through Tribal-State Compact negotiations. It is improper for the same requirements to be imposed in blanket fashion on all California gaming tribes under the auspices of a statewide gaming regulation when the MOAs stand as proof that such requirements are in the nature of Compact amendments.

D. Alternatives to CGCC-8

Since circulating its first draft of CGCC-8 in late March 2007, the CGCC has met with strong opposition from tribal gaming regulators on a number of fronts. Most, if not all, Taskforce members questioned the need for the regulation because the State had (and still has) failed to show any deficiency with the status quo. Many Taskforce members also viewed the regulation as a wholesale amendment of the 1999 Compact – and thus the proper subject of renegotiations with the State – rather than an elaboration or clarification of what the Compact already permitted. Nonetheless, in the spirit of good faith, and in response to repeated requests by the CGCC, tribal gaming regulators and tribal attorneys proposed alternatives language to the objectionable portions of CGCC-8 as well as viable alternatives to the regulation itself. The proponents of these alternatives did not purport to speak on behalf of all or even most of the other members of the Taskforce, but hoped to spur discussions that would result in a compromise approach that most of the parties could live with.

The CGCC rejected not only the alternatives to CGCC-8 but also the proposed language that would have left the CGCC's version of CGCC-8 largely intact. A brief description of the proposed alternatives follows.

1. **No CGCC-8: maintain the status quo**

The CGCC proposed CGCC-8 to address the supposed regulatory void created by the *CRIT* decision. Yet, despite repeated requests from Taskforce members, the CGCC failed to show – indeed, made no effort to show – that the State needed greater oversight. This is unsurprising because the existing practices of Tribal Gaming Agencies, coupled with the regulatory regime established by the existing Compacts, ensure that tribal gaming in California meets or exceeds the highest regulatory standards.

California Tribes have adopted the NIGC MICS as their own internal control standards, and submit to annual compliance and financial audits by independent licensed CPAs. These financial audits are submitted to the NIGC pursuant to federal regulations. In addition, Section 8.1.8 of the Compact requires Tribes to conduct "an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants." Moreover, the Compact at Section 7.4 gives the State the right to ensure the independent audit has been conducted by inspecting Class III tribal gaming papers and records.

Tribes in California direct significant funds to fulfilling their role as the primary regulators under the Compact. The Rose Institute of State and Local Government projects tribal gaming commission annual budgets totaling $90,282,837, an average of more than $1.5 million per Tribe. *See* Study of Gaming Regulatory Agency Expenditures of California Tribes, September 2007 at page 5. *Id.* Surveyed Tribes employ 1,833 employees in their gaming agencies, with an average size of 32 employees per regulatory agency. *Id.* Comparing the regulatory budgets of California gaming Tribes and Nevada casinos, the Rose study determined that the Tribes spend more than six times what the Nevada operations spend per machine. *Id.* at page 6 ($1560.85 vs. $241.34).

The CGCC also stated that CGCC-8 would fulfill the objective of securing the State's share of the revenue under the Compacts. (See CGCC 4/6/07 Statement of Need). However, Compacts with percentage revenue sharing provisions already include specific audit provisions negotiated to enable the state to verify accurate payments. Other Compacts provide for flat fee payments to the State rather than payments by percentages based upon net win. CGCC-8 is not necessary for this stated purpose.

2. Individual Compact Amendments & MOAs

From the start, the CGCC's position has been that CGCC-8 does not create any new rights or obligations, but only fleshes out what the State is entitled to under the existing Compacts. Many Tribes disagree, viewing the CGCC's claimed authority to audit class III gaming operations, and to demand the adoption of MICS that equal or exceed those promulgated by the NIGC (to name just two), as the assertion of authority beyond what the Compact allows. Indeed, the State's recent renegotiation of some 1999 Compacts to expressly provide for such authority demonstrates that the State lacks such authority in the absence of Compact amendments. (See Discussion of Legal Authority below.)[5] Accordingly, the most obvious

[5] The State also has negotiated Compact amendments as a means to further its stated interests to confirm tribal gaming integrity and protect citizens. Under these amendments, patrons have the right to independently

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alternative to CGCC-8 is for the State to initiate negotiations with each Tribe on a government-to-government basis and seek the new rights and obligations it desires through the Compact's amendment process.

In addition, some tribes have entered into Memorandum of Agreements (MOAs) with the State to provide for MICS adoption and audits by the CGCC. This is another alternative to CGCC-8.

3. Legislative Fix

Another alternative is waiting for the federal government to implement its own *CRIT* fix, which it has been pursuing since shortly after the *CRIT* decision. A federal fix would address the perceived lack of oversight necessitating CGCC-8, and once in place would render any claimed State authority redundant and burdensome. Since all Tribes are continuing to enforce minimum internal control standards that meet or exceed the NIGC MICS, there is no lack of regulation that warrants immediate action by the State.

4. NIGC Oversight Pursuant to Amended Gaming Ordinances

A number of California gaming tribes have amended their gaming ordinances to expressly incorporate the NIGC MICS and to vest the NIGC with authority to enforce tribal compliance with those standards. Other Tribes have indicated their intention to do the same. (Because the *CRIT* decision did not affect the NIGC's authority with respect to financial audits, or alter the existing independent financial audit requirements in Section 8.1.8 of the Compact and 25 U.S.C. §2710(b)(2)(C), and because gaming ordinances already provide for submission of these audits to the NIGC, the amendments would not need to address such audits.) These amendments to gaming ordinances remove the regulatory gap that the State perceives to exist as a result of the *CRIT* decision and the resulting NIGC oversight renders any claimed State authority unnecessary, redundant and burdensome.

5. Agreements between Individual Tribes and the State Gaming Agency

Many Tribes also have indicated a willingness to explore entering into MOAs with the State Gaming Agency, under which an individual Tribe would reaffirm its adherence to internal controls at least as stringent as those established by the NIGC and its willingness to enforce compliance with such standards (whether through its tribal gaming agency or an independent auditor) and to provide the CGCC with certification of that compliance on an annual (or other mutually agreed upon) basis.

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arbitrate disputes over the play or operation of a game if dissatisfied with the resolution of such dispute by management and the TGA. Gaming devices are tested to ensure fairness to patrons by the TGA, independent auditors, and the CGCC, and the results of the independent audit are provided to the CGCC.

6. Alternative Language to CGCC-8 Provisions

a. Rumsey Proposal

The Rumsey Tribal Gaming Agency submitted an alternative to the CGCC's proposed CGCC-8. Under the Rumsey proposal, each tribal gaming agency would maintain a System of Internal Controls ("SICs") that would equal or exceed the agency's established MICS. The CGCC, in turn, could ensure the Tribe's compliance with the SICs by conducting compliance reviews of the Tribe's gaming operation, including its table games (if applicable). The CGCC would then provide a written DRAFT report of its findings to the Tribe, which could either accept or dispute. Disputes that could not be resolved informally or by the full CGCC would then be subject to the dispute resolution process outlined in Compact Section 9.0.

b. Attorney Work Group Proposal

Circulated by a group of attorneys for a handful of Taskforce members, the attorney work group ("AWG") draft would have accepted many of CGCC-8's provisions, including the requirement that each TGA adopt MICS standards applicable to Class III gaming equal to or more stringent than those established by the NIGC. The AWG draft also would have acceded to the CGCC's desire for greater State oversight by agreeing to provide the State Gaming Agency with copies of the financial audits and MICS Agreed-upon Procedures Reports of the Tribes' Class III gaming operations performed by independent, California-licensed CPAs, as required under IGRA. Pursuant to this draft, the CGCC would also have access to the CPA's Agreed-upon Procedures work papers, the reports and work papers of the internal audit staff, CPA observation checklists, findings by the CPA and internal audit, any exceptions and responses to those exceptions.

Pursuant to this AWG draft, if the Agreed-upon Procedures Report failed to conclude that the gaming operation was in compliance with required written internal control standards, then audited corrective action plans were mandated with CGCC input into those plans. If the plans were not complied with, then the CGCC could conduct its own compliance audit.

The AWG also proposed a more detailed dispute resolution provision than the one suggested by the CGCC, which proposed that any disputes concerning the regulation would be "referred to the full CGCC for review and decision" and then, if necessary, resolved pursuant to the Compact's dispute resolution provisions. The AWG's proposed alternative regulation maintained the State's authority to decide a dispute initially, but would have allowed a Tribe to submit an adverse ruling to binding arbitration, followed by, if necessary, an action to enforce the arbitrator's award in a court of competent jurisdiction. If a Tribe refused to comply with an arbitrator's decision, the State could invoke the Compact's dispute resolution provisions.

Finally, the AWG proposed a Sunset Provision providing that CGCC-8 would not apply to any gaming operation over which the NIGC exercises jurisdiction to monitor and enforce Class III MICS, and that the Tribe would provide to the CGCC a copy of the report issued by the NIGC.

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E. Legal Authority

California does not have civil regulatory jurisdiction on Indian land absent a federal statute expressly conferring jurisdiction on the state. Public Law 280 did not confer such jurisdiction.[6] The only state civil regulatory jurisdiction that exists over a California Indian casino is through a Tribal-State Gaming Compact negotiated pursuant to IGRA. The Compact, at Section 8.2, expressly provides nothing therein affects the civil or criminal jurisdiction of the state under Public Law 280.

The CGCC cites to Compact Sections 8.4.1, 8.1.8, and 7.4 as the legal authority for CGCC-8. (*See* CGCC "Statement of Need for adoption of Regulation regarding Minimum Internal Control Standards (CGCC-8)," dated April 6, 2007). However, none of these Compact Sections provide legal authority for the requirements the CGCC seeks to impose on Tribes and Tribal Gaming Agencies through CGCC-8, which would require adoption of internal control standards at least as stringent as the federal MICS, submission of the financial audit to the CGCC, and submission to financial and MICS compliance reviews/audits by the CGCC.

The Compact at Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of such regulations is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state" *so that "rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency* in respect to any matter encompassed by Sections 6.0, 7.0, and 8.0 shall be consistent" with that regulation adopted by the state pursuant to Section 8.4.1. Further, neither the State Gaming Agency nor the Association may adopt regulations that materially alter express provisions of the Compact or render any such provisions void or a nullity.

Section 8.1 states that the Tribal Gaming Agency is vested with the authority to, and must, promulgate rules, regulations or specifications ("rules") governing a series of topics, which do *not* include a requirement to adopt or enforce the MICS. There is no Compact provision that refers to the MICS.[7] Simply put, Section 8.4.1 does not authorize a uniform state regulation on the MICS because it is not a matter encompassed by Section 6, 7, or 8 of the Compact.

Moreover, even *if* the MICS had been included in Section 8.1, there is no legal authority to include in CGCC-8 a compliance review/audit of a casino's compliance with the MICS. Section 8.1 expressly provides "the Tribal Gaming Agency shall be vested with authority" to promulgate rules governing the topics in Section 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Section 8.1 is a recognition of Tribal Gaming Agency jurisdiction over these areas. *Nothing in Section 8.1 confers jurisdiction on the state to enforce*

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[6] See Act of Aug. 15, 1953, ch. 505, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. § 1360).

[7] The fact that the MICS was not included is no accident. At the time of the Compact negotiations, the National Indian Gaming Commission had promulgated federal minimum internal control standards, required tribes to adopt tribal standards that meet or exceed those federal standards, and enforced compliance with the foregoing. Also, while some tribes took the position that NIGC lacked jurisdiction under IGRA, California tribes adopted MICS and the NIGC actively enforced the MICS. Tribes continue to enforce tribally adopted MICS. The State does not have, and has never had, regulatory authority over these tribal MICS. Therefore, any State regulatory authority in this area must come about through Tribal-State Compact negotiations.

the Tribal Gaming Agency rules pertaining to the gaming operation. Compact Section 7.1 provides that it "is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact."

The Compact could have directly required the gaming operation to comply with specified requirements on the subjects of Section 8.1.1 through 8.1.14 and could have provided state jurisdiction to enforce those requirements. Instead, the Compacts recognize the primacy of the Tribal Gaming Agency and in Section 8.1 expressly reserves to the Tribal Gaming Agency the authority over enforcement of compliance of the gaming operation with the rules it has adopted pursuant to Section 8.1.

Nor does Section 7.4 confer this jurisdiction. Under Section 7.4, the state may inspect gaming facility Class III records where reasonably necessary to ensure compliance with the Compact. Section 7.4 cannot be read to negate Section 8.1, which expressly provides for Tribal Gaming Agency's authority and jurisdiction for enforcement. Instead, Section 7.4 authorizes the state to review the rules governing the subjects of Section 8.1.1 through 8.1.10 to ensure such rules are in place and to review whether the Tribal Gaming Agency has a mechanism in place to ensure enforcement in an effective manner. Indeed, the State Gaming Agency has been conducting this type of compliance review for years through the California Department of Gambling Control (now the Bureau). The CGCC also recognized the limitations in the 1999 Compacts when it asserted in its budget change proposal for fiscal year 2006-2007 that the state has "restricted access to financial reports and information related to internal controls over gaming devices and gaming device revenues. California has limited Compact authority."[8]

In short, Section 7.4 and its subsections do not authorize the CGCC to establish minimum internal control standards for tribal gaming operations, do not authorize the CGCC to mandate that Tribal Gaming Agencies submit copies of tribal internal control standards and annual audits (financial or MICS-related) to the CGCC, and do not authorize the CGCC to conduct the comprehensive and unrestricted compliance reviews contemplated under CGCC-8, or require Tribes to engage in steps to address the CGCC's review findings.

Finally, Section 8.1.8 requires the Tribal Gaming Agency to adopt a rule requiring an independent CPA to conduct a financial audit at least annually and to ensure enforcement in an effective manner. Since these sections clearly establish the Tribal Gaming Agency as the responsible authority for regulating the annual independent financial audit of the tribal gaming operation, Section 8.1.8 does not provide legal authority for the CGCC to require submission of the financial audit report or to conduct compliance reviews/audits of the financials or of audited financial statements. In fact, the Compacts contain specific audit provisions for the State to verify revenue share, which clearly would have been unnecessary if the financial compliance review/audit proposed by CGCC-8 was authorized under the Compact.

In sum, CGCC-8 cannot confer civil regulatory jurisdiction to the state that was not conveyed by the Compact. As such, CGCC-8 is an unauthorized extension of the state's authority under the Compact. In the absence of legal authority, the provisions of CGCC-8

[8] State of California Budget Change Proposal For Fiscal Year 2006-2007 submitted to Department of Finance, at page 1-8.

amount to material amendments of the Tribal-State Compacts. As such, they must be negotiated between the State and the Tribe pursuant to section 12.1 of the Compact. Indeed, the fact that the 1999 and 2004 Compacts do *not* authorize the state to require MICS adoption, submission of financial audits, or to conduct MICS and financial compliance reviews/audits is evidenced by new compacts and new memorandum of agreements specifically including these provisions.

F. Duplicative

In his letter of March 30, 2007 to the U.S. Senate Committee on Indian Affairs ("Committee"), Governor Schwarzenegger told the Committee that "[California's] approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate, NIGC's activities." CGCC-8 is entirely inconsistent with the Governor's unequivocal message to the Committee.

CGCC-8 is needlessly duplicative in several respects. As stated above, the *CRIT* decision did not alter the existing federal requirements for annual external financial audits found at 25 U.S.C. § 2710(b)(2)(C) or affect in any way the NIGC's regulatory authority over the conduct and results of such audits. Section 8.1.8 of the 1999 Compact (and comparable sections of the new or amended Compacts) place the responsibility for conducting the annual outside audit on the Tribal Gaming Agency[9], an approach consistent with the federal requirement. Thus, the financial audit requirements contemplated by CGCC-8 are already in place, with NIGC oversight, and would be entirely duplicative of existing tribal and federal activities.

Additionally, the initial "Statement of Need" for CGCC-8 stated that the proposed regulation would "guarantee that [the State's] interest in the revenue sharing that is a part of each compact is secure." However, all Compacts with percentage revenue sharing provisions already include specific audit provisions negotiated to enable the state to verify that such tribal payments are accurate. (See, for example, sections 5.3(c) and (d) of the 1999 Compacts.) Thus, these provisions of CGCC-8 needlessly duplicate existing Compact requirements.

With respect to its MICS-related provisions, CGCC-8 is duplicative in that tribes already have in place standards at least as stringent as the NIGC MICS, and these standards are enforced by Tribal Gaming Agencies. In addition, in recent weeks a number of California gaming tribes have amended their Tribal Gaming Ordinances[10] to expressly incorporate the NIGC MICS. By so doing, those tribes have granted the NIGC authority to monitor and enforce tribal compliance with those standards, up to and including the authority to close non-conforming facilities, under 25 U.S.C. § 2713 and 25 CFR pt. 542.3(g). The first of these ordinance amendments were approved by the Chairman of the NIGC, and went into effect, in January, 2008. A number of

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[9] Section 2.20 of the 1999 Compacts, and similar sections of the new or amended compacts, define "Tribal Gaming Agency" as the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the National Indian Gaming Commission, as primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribal Gaming Ordinance.

[10] Section 2.10 of the 1999 Compacts, and similar sections of the new or amended compacts, define "Gaming Ordinance" as a tribal ordinance or resolution duly authorizing the conduct of Class III Gaming Activities on the Tribe's Indian lands and approved under IGRA.

additional tribes have announced their intention to similarly amend their Gaming Ordinances in the near future.

With respect to these tribes in particular, and with respect to all tribes if and when Congress adopts "CRIT-fix" legislation, the MICS-related provisions of CGCC-8 needlessly duplicate tribal and federal regulatory activities with no offsetting benefit.

III. Recommendation

For the foregoing reasons, the Association Regulatory Standards Taskforce recommends that the Association find that draft CGCC-8, as presented to the Taskforce for consideration, is unnecessary, unduly burdensome, and unfairly discriminatory. Accordingly, CGCC-8, as drafted, should not be adopted as a proposed regulation for presentation to the Association. Furthermore, if the draft proposed regulation is adopted and presented to the Association, the Taskforce recommends that the Association disapprove CGCC-8.

Exhibit A19

AUGUSTINE GAMING COMMISSION

84-001 Avenue 54 • Coachella, CA 92236 • (760) 398-2531 • Fax (760) 391-5094

November 17, 2008

Dean Shelton, Chairman
California Gambling Control Commission
2399 Gateway Oaks, Suite 220
Sacramento, California 95833

RE: Uniformed Tribal Gaming Regulation CGCC-8

Dear Mr. Shelton and Fellow Commissioners:

The purpose of this letter is to strongly advise the California Gambling Control Commission (Commission) that the proposed Commission Regulation CGCC-8 "Minimum Internal Control Standards" is unnecessary, unduly burdensome, costly, and constitutes a major amendment to the California Tribal-State Gaming Compact (Compact) that was negotiated between the Governor of the State and the Tribes in the 1999 Compact. In addition, the Regulation, in its present form, has been significantly amended and should be sent back to the Tribal-State Regulatory Association (Association) for further review.

The State contends that since the United States District Court of Appeals District of Columbia ruled in the Colorado River Indian Tribes vs. N.I.G.C. (CRIT), that N.I.G.C. no longer has compliance authority. When in fact the presiding Judge, John D. Bates, "expressly cautioned" that the decision did not mean that N.I.G.C. would never have jurisdiction over class III gaming. In fact, in April of this year N.I.G.C. conducted a site inspection at Augustine Casino and reviewed Key and Primary Management licensing procedures, EPROM control, sensitive key control, and card inventory for compliance with the Federal Minimum Internal Control Standards (MICS). In their subsequent letter regarding their site visit they indicated that during their **next visit** they would review, among other procedures the Surveillance Operation. It is clear that the strength of the National Indian Gaming Commission's compliance authority lies with the Tribal Ordinance, which must be approved by the Chairman of the National Indian Gaming Commission and is still in affect. Thus a MICS amendment to the Compact is redundant and unnecessary.

In addition, the Association worked together for over a year to consider the State's proposed amendment (Regulation CGCC-8). After all of the dedicated work, many

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meetings, and an expenditure of significant funds State Commission staff significantly amended the Regulation and prematurely put it before the Commission for a vote. I believe that there were a number of significant changes in the State's final revision of CGCC-8 and that it should have been returned to the Association for further input.

Commission Staff claim that since the Tribes have already developed gaming ordinances to comply with the MICS, the cost to the Tribes for the State to conduct compliance visits would be minimal. However, the State fails to realize that any site inspection takes additional preparation before the compliance visit and staffing during the visit. It is also abundantly clear that N.I.G.C. Staff are going to continue to conduct site visits for compliance with the MICS. Thus the State will be duplicating N.I.G.C. compliance efforts and Tribes will be forced to increase their expenditures for site visits. This is occurring at a time when Tribes are experiencing decreases in revenue and the economic environment indicates these decreases will increase in the future. In addition, it would be interesting to know if Commission Staff have done any kind of cost benefit analysis to determine if their proposal justifies the creation of a larger State Bureaucracy at a time when the State of California has billions of dollars of unsatisfied debt.

In summary, proposed Regulation CGCC-8 is totally unnecessary, costly to the citizens of California and the Tribes, burdensome and redundant. The State has more than enough responsibility if they merely enforce the terms of the existing Compacts.

Respectfully submitted,

Michael Lombardi, Chairman of the Augustine Gaming Commission

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Exhibit A20

SUSANVILLE INDIAN RANCHERIA

2008 NOV 20 A 11:19

November 18, 2008

VIA U.S. MAIL
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, 95833-4231
Attn: Chairman Dean Shelton

Re: Re-Adoption of CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The Susanville Indian Rancheria (Tribe) provides the following responses to the California Gambling Control Commission's (CGCC) re-adoption of proposed uniform CGCC-8.

The Tribe is greatly concerned that the CGCC has decided to re-adopt CGCC-8 despite the overwhelming opposition and disapproval by the Tribal State Association after a very lengthy review period. Specifically, the CGCC was privy to, over the course of some twenty (20) months, numerous arguments against CGCC-8's implementation and adoption in various forms and CGCC-8's structural flaws. To this end the CGCC has so far failed miserably in its attempt to both justify the need for CGCC-8 and its re-adoption as a regulation, but most disturbing is the announced intent to promulgate CGCC-8 outside the agreed upon procedures for implementing gaming regulations in conjunction with the Tribal-State Association (Association), contained in the various versions of the Tribal-State Compact.

First, the means of re-adoption and the CGCC's refusal to submit CGCC-8 to the Association for a vote of approval is inconsistent with the language of the 1999 Tribal-State Compact (Compact), contractual language that the Tribe agreed to with the State of California and relies upon, which specifically states:

> "...no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation..." [1]

This simple two-part process could not be clearer. However, the apparent failure of the CGCC to forward the re-adopted version of CGCC-8 to the Association following the CGCC's re-adoption for the requisite approval is most troubling to the Tribe and smacks

[1] See Tribal-State Compact at Section 8.4.1 (a).

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of both unilateralism and paternalism, and is shameful in light of the lessons learned during the State's infancy, during the State's early years of its dealings with Indians.[2] If the Tribe cannot rely on the agreed upon Compact language of Section 8.4.1, in its entirety, for practical purposes the Tribe cannot reasonably rely on the State to honor *any* of its commitments or language contained within the Tribe's Compact or the various Compacts in existence.

Second, the CGCC cannot justify the need for CGCC-8. In its Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)[3], the CGCC makes various justifications for the implementation of CGCC-8, which include: the presumed vacuum in regulation left by the Colorado River Indian Tribes decision; the State Gaming Agency's Authority under the various Compacts, Applications outside Tribal Gaming, uniformity in regulations, absence of alternatives to regulation and regulatory duplication. These points are discussed in detail below.

i. The CRIT Decision

In its support of CGCC-8 the CGCC argues that the Colorado River Indian Tribes (*CRIT*) decision and a supposed "vacuum" in regulation is the chief component for the policy rational behind the implementation of CGCC-8. However, this rational is misguided and although the *CRIT* decision held that the National Indian Gaming Commission (NIGC) lacked the authority to promulgate or enforce Minimum Internal Control Standards for Class III gaming, under basic contract law, the decision cannot unilaterally, nor does it, alter the terms of any of the Tribal-State Compacts.[4]

The State could have addressed its MICS concerns at the time of entering its 1999 Tribal-State Compact with sixty-one (61) tribes, but it failed to do so. Additionally, in subsequent compacts, the State also failed to include any reference to or negotiate for MICS provisions until 2006—and in doing so, MICS was included as a negotiated bargained for exchange. Thus, in the absence of the State demonstrating a concern for MICS, introduction of the CGCC-8, some nine-years after signing its initial Tribal-State Compact, is unjustified. Moreover, the absence of any need for a State mandated MICS within the last nine (9) years is telling and infers that until the CGCC's introduction of CGCC-8, the State believed whole heartedly that the Compact provided the Tribes with the primary responsibility over tribal gaming regulation, including MICS.

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[2] It should be noted that when the Association previously disapproved a different proposed regulation, specifically CGCC-7, consistent with Section 8.4.1, the CGCC revised the disapproved regulation addressing noted deficiencies, re-adopted the revised version and then appropriately presented CGCC-7 back to the Association for approval prior to being sent to the tribes for comment and ultimately implemented.

[3] See CGCC's Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8).

[4] See *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).

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Additionally, included within its *CRIT* premise of need is that CGCC-8 is required to preserve independent oversight of Tribal MICS compliance, which will in turn increase public confidence in tribal gaming. The CGCC has not provided any evidence demonstrating a lack of independent oversight within tribal gaming, or evidence that the public lacks confidence in any of the games or devices operated by California tribes. Alternatively, the results of the Tribal Regulators Networking Group survey indicate otherwise, that the NIGC's federal MICS remains the standard for tribal gaming operations in California, notwithstanding *CRIT*.[5] Additionally, the general public is likely unaware of the purpose or existence of MICS and to allege that public confidence will increase due to the implementation of CGCC-8 is unsupportable.

Finally, the CGCC's use of the *CRIT* decision as the basis of CGCC-8's implementation also fails to address the regulations inclusion of financial audits. The *CRIT* decision does not touch upon nor address the role assumed by the NIGC concerning financial audits nor does the decision alter and/or modify the requirement of a yearly independent financial audit as set forth under Section 8.1.8 of the Compact and Indian Gaming Regulatory Act (IGRA) at 25 U.S.C. 2710(b)(2)(C).[6] As this federal requirement remains untouched by the *CRIT* decision, there appears to be no legitimate reason for the inclusion of financial audits within CGCC-8.

ii. Legal Authority

The CGCC cites to Compact Sections 8.4.1, 8.1.8 and 7.4 as the legal authority for implementing CGCC-8. (See CGCC "Statement of Need for Adoption of Regulation regarding Minimum Internal Control Standards (CGCC-8)," dated April 6, 2007). However, none of these Sections provide any legal authority for CGCC to unilaterally impose CGCC-8 upon the Tribes outside of the agreed upon procedures set forth in Section 8 of the various compacts.

Compact Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of this regulatory adoption process is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state "so that 'rules regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0 and 8.0 shall be consistent." Thus, in the absence of complying with Section 8.4, uniformity in gaming regulations is compromised. Additionally, nowhere within the Compact does it provide the State the authority for unilateral adoption of regulations or to materially alter express provisions of the Compact or render any provisions null, void or unnecessary.

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[5] See attached Tribal Regulators Networking Survey
[6] 25 U.S.C §2710 et seq.

Materially altering express provisions of the Compact and or interpreting it in a manner wholly inconsistent with the written Compact language is exactly what the CGCC is attempting to accomplish to justify its adoption of CGCC-8. In its October 1, 2008 Explanatory Summary of Proposed Changes to CGCC-8 Minimum Internal Control Standards (MICS)(Amended Form Dated October 1, 2008) to be Considered at the October 14, 2008 Meeting, CGCC Chief Counsel, Evelyn M. Matteucci, referenced the *Boghos v. Certain Underwriters at Lloyd's of London* case in support of the proposition that the CGCC may adopt CGCC-8 outside the process set forth in the various forms of the Compact.[7] However, a review of the *Bogus* case, at footnote 1, ironically states that "where language is clear and express, it governs."[8] A review of Section 8.4 indicates there exists no ambiguity within the express written language requiring the interpretation permitted by *Bogus*, much less interpretation and/or deviation from the express and unambiguous language set forth by the various Compacts. In short, Mrs. Matteucci 's Compact interpretation and language wizardry is nothing more than a half hearted attempt to create a favorable legal interpretation and cloud the meaning of an otherwise perfectly clear regulatory approval process.

iii. Applications Outside Tribal Gaming

The CGCC readily admits that there presently exist no MICS provisions for any other form of gaming within the State of California. And although the State spent time and effort drafting MICS provisions for California's cardrooms, the cardroom industry and its various working groups, arrived at the conclusion that the final product revealed a lack of understanding of the purpose of MICS and how they should be applied in a cardroom environment. Moreover, the MICS provisions presented were a composite of NIGC's MICS and various other MICS statutes from other gaming states. As of the date of the February 2008, Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8 report, some five years after the State's 2003 attempt to draft MICS provisions, no cardroom MICS provisions have been adopted.

Ironically, concerning cardroom regulation the CGCC has *plenary* authority to adopt and implement MICS upon non-tribal gaming facilities throughout California. And although cardrooms and tribal gaming facilities have similar operational requirements, namely table games operations, currency drop and count and surveillance departments, the State does not, nor has it required, card rooms to implement MICS provisions. The fact that CGCC has permitted cardrooms to operate without MICS is both telling and discriminatory. It is also disturbing that the State does not act when it has *plenary* authority over a billion dollar cardroom industry, but affirmatively acts to impose its will upon California's tribal gaming industry, when it lacks the authority to do so.

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[7] *See Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495)
[8] *Bank of the West v. Superior Court* (1992) 2, Cal.4th 1254, 1264.

iv. Uniformity in Regulation

The CGCC next alleges that CGCC-8 will "foster uniformity" within California's tribal gaming regulatory environment. CGCC-8 is not required to foster uniformity, because uniformity already exists. A Tribal Networking Group survey indicates that NIGC MICS remain the minimum standards for internal controls for California Indian tribes, despite the *CRIT* holding. Moreover, the fact is that Indian tribes, including California tribes, first supported the adoption of MICS to protect the integrity of Indian gaming as well as protecting tribal assets, the very heart of the purpose and policy of Indian gaming as set forth under the IGRA. Those tribes who were members of the National Indian Gaming Association (NIGA) in the 1990's initiated what was referred to as the "MICS Work Group", and tribes voluntarily offered the services of their professionals, including internal auditors, accountants, gaming commissioners, managers, attorneys, etc., in developing a model MICS to be used by gaming tribes.

This model of cooperative MICS adoption is in stark contrast to the draconian adoption of MICS outside the legal parameters of adoption included in the various Compacts and which again smacks of unilateralism and paternalism. Moreover, compact regulatory uniformity will be very difficult to accomplish given the State's penchant for negotiating compact provisions with different goals and objectives. If the State truly wanted to create uniformity in regulation, it should have continued to use the 1999 model compact as opposed to deviating from it.

If the State, after permitting uniformity to go by the wayside, wishes to advance uniformity in regulation, it may do so by requesting each tribe adopt the NIGC MICS via compact amendments, as it recently did so with four re-negotiated compacts. These compacts included a Memorandum of Agreement (MOA) whereby the tribes agreed to implement the NIGC MICS and submit to enforcement and auditing by the State Gaming Agency. Absent arms length negotiations as noted by these recent compact amendments, the unilateral adoption of CGCC-8 is unnecessary. Moreover, the use of MOA's is proof that there is a viable alternative to addressing the State's MICS concerns outside of CGCC-8.

Pursuant to the terms of the Compact, the best and most appropriate approach to addressing the State's MICS concerns would be through compact negotiations with the Tribe—not through regulatory and political bureaucracy. Moreover, addressing the State's MICS concerns through an amendment of the Compact is the only true means of maintaining respect for tribal sovereignty, and is consistent with the State's established practice in dealing with other California gaming tribes. In the absence of respecting tribal sovereignty, the Tribe will have no choice but to seek all means of protecting and defending its interests from what the Tribe believes is a unilateral and unnecessary

expansion of the State's regulatory role over tribal gaming through the proposed CGCC-8.

v. Alternatives to CGCC-8

Presently, California tribes are overwhelmingly opposed to CGCC-8. Additionally, as noted in the Detailed Response to Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8), seven tribes, and the California Department of Justice-Bureau of Gambling Control, provided comments opposing the CGCC's implementation of CGCC-8 in a manner that is both inconsistent with the express written provisions of the various Compacts and in a manner that is disrespectful to the tribes themselves.[9] Both the tribes and Department of Justice made suggestions varying from No CGCC-8, to individual compact amendments and/or MOA's, legislative fixes, NIGC oversight and agreements between the State, tribes and CGCC. These alternatives are telling, and demonstrate a willingness by California tribes to engage the CGCC in its MICS concerns and attempt to formulate a reasonable and acceptable means of both addressing MICS and implementing and imposing it upon themselves.

Finally, CGCC-8 provides for an unequivocal expansion of the CGCC's oversight role by impermissibly establishing State mandated MICS—which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact. Moreover, the Tribe finds that CGCC-8 is entirely unnecessary, unduly burdensome and duplicative in light of the requirements contained in the Susanville Indian Rancheria Gaming Ordinance (Ordinance) as approved by the National Indian Gaming Commission (NIGC) on March 23, 2005, in accordance with the Indian gaming Regulatory Act. Specifically, Section 4.19.1(1) of the NIGC approved Ordinance provides that the Tribe's Gaming Commission shall promulgate such regulations, policies and procedures as are necessary to carry out the orderly performance of its duties and powers, including, but not limited to, MICS at least as stringent as those issued by the NIGC (25 CFR 542). This NIGC approved system of establishing MICS is vastly different than having the CGCC mandate a particular set of MICS, establish enforcement procedures and alter the Compact in unilateral fashion. Furthermore, the NIGC approved Ordinance is entirely consistent with the agreed upon duties and authority granted to the Tribe's Gaming Commission pursuant to Compact Section 8.1.

The Tribe therefore opposes CGCC-8 and additionally incorporates by reference those deficiencies and objections noted in the February 2008, Association Regulatory Standards Taskforce Final Report.[10] We respectfully urge the CGCC, to consider the

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[9] See Tribal and Department of Justice-Bureau of Gambling Control, correspondence, included in the CGCC's Detailed Response to Association Objectives to Minimum Internal Control Standards (MICS) (CGCC-8), Exhibits A-1-A-8.

[10] See Attached February 13, 2008, Association Regulatory Standards Taskforce Final Report.

above when advancing and considering the imposition of CGCC-8 upon the Tribe. We hope you reconsider your position and that the State immediately change course and address MICS in the only appropriate manner—through government-to-government negotiations in accordance with the IGRA.

Sincerely,

Mr. Stacy Dixon
Tribal Chairman

Enclosures (2)

Cc: Susanville Indian Rancheria Gaming Commission
Philip Hogen, Chairman, National Indian Gaming Commission
Arnold Schwarzenegger, Governor, State of California
Jerry Brown, Attorney General, State of California
Dave Cox, Senator, California First District
Rick Keene, Assemblyman, California 3rd Assembly District
Matthew Campoy, Acting Director, Bureau of Gambling Control
Rosette & Associates, PC

ASSOCIATION REGULATORY STANDARDS TASKFORCE FINAL REPORT STATEMENT OF NEED RE. CGCC-8 FEBRUARY 13, 2008

I. INTRODUCTION

The California Gambling Control Commission (the "CGCC") submitted a draft proposed regulatory standard, CGCC-8, to the Tribal-State Association (the "Association") on July 11, 2007, prior to its adoption by the CGCC. The Association, in accordance with its adopted Protocol for Submission of Proposed State Regulatory Standards to the Association (the "Protocol"), created an Association Regulatory Standards Taskforce (the "Taskforce") to review CGCC-8. The Taskforce held its first meeting on Wednesday, August 8, 2007. The CGCC then submitted a revised proposed regulation to the Taskforce on September 7, 2007. Subsequent meetings were held on September 11, 2007, November 7, 2007, and January 9, 2008. These meetings were attended by a majority of the tribal regulators and representatives from the State of California (the "State").

The purpose of the Taskforce meetings was to discuss proposed criteria and information necessary to analyze and review the proposed regulation. Pursuant to the Protocol, the Taskforce is charged with providing a Statement of Need for the proposed regulation, including the rationale for the need based upon fact or policy. The Taskforce in developing this Statement of Need may consider the following: (i) economic impact on gaming operations, including whether the proposed regulatory standards impact small operations differently than large operations; (ii) whether the standard or policy embodied by these proposed regulatory standards is or will be applied to gaming facilities other than Indian casinos, such as card rooms and race tracks; if not whether there is any disparate impact or discriminatory effect created by the proposed regulatory standards; (iii) whether the proposed regulatory standards fosters uniformity; and (iv) alternatives to the proposed regulatory standards; (v) provide a statement of legal authority; (vi) if basis for regulatory standards is factual rather than policy based, address whether the proposed regulatory standards are duplicative. See Protocol for Submission of Proposed State Regulatory Standards to the Association, Amended January 21, 2004, Section (B)(2)(b).

In accordance with these duties, the Taskforce Chairman respectfully submits this final report and Statement of Need to the Association.

II. STATEMENT OF NEED

The CGCC has cited different rationales for CGCC-8. One rationale cited in the regulation is that the *CRIT* decision[1] "changed the contours" of a basic Tribal-State Compact premise that regulatory jurisdiction lies with federal, state and tribal governments when it held that the National Indian Gaming Commission (the "NIGC") does not have the authority to promulgate or enforce Minimum Internal Control Standards ("MICS") for Class III gaming. (Section (a) of CGCC-8.)

[1] *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).

Enclosure (1)

However, the *CRIT* decision does not and cannot change the terms of the Compact. The State could have expressly addressed the inclusion of MICS in the original 1999 Compacts, but did not do so.[2] Nor was this done in subsequent amendments, as the State of Arizona did when it negotiated new Compacts with Arizona tribes in 2003. The 2003 Arizona Compacts expressly require gaming tribes in that state to implement MICS, as amended from time to time. The CGCC's attempt to adopt and enforce the NIGC MICS as statewide regulations is an improper attempt to amend the terms of the Tribal-State Compact in circumvention of section 12.1 of the Compact.

The CGCC also contends that its proposed regulation is needed "to preserve the benefits of independent oversight of Tribal MICS compliance" and "serve to increase public confidence that Tribal gaming meets the highest regulatory standards." CGCC-8, subdivision (a). However, the results of the Tribal Regulator Networking Group's survey demonstrate that the NIGC MICS remain the applicable standards for tribal gaming operations in California, notwithstanding the *CRIT* decision. Thus, the rationale that CGCC-8 is needed to maintain uniform MICS for tribal gaming operations in California is also invalid. (See also Section VI(A), (B) below, addressing the necessity of CGCC-8).

The rationale that the regulation is needed to address the *CRIT* decision also does not explain why CGCC-8 contains provisions requiring financial audits. The *CRIT* decision did not affect the role the NIGC plays with respect to financial audits or alter the existing requirements for annual external financial audits found in both section 8.1.8 of the Tribal-State Compact and Indian Gaming Regulatory Act of 1988 (the "IGRA")[3] at 25 U.S.C. § 2710(b)(2)(C). Since the regulatory scheme relating to annual financial audits remains untouched by the *CRIT* decision, there is no legitimate basis for including the financial audit provisions in CGCC-8.

A. Economic Impact on Gaming Operations

The provisions of CGCC-8 requiring adoption of the NIGC MICS and an annual "Agreed-Upon Procedures" audit would not pose a significant economic impact because, as stated above, these requirements are already enforced by Tribal Gaming Agencies. The requirement in CGCC-8 for an annual audit of the gaming operation's financial statements also does not pose a significant economic impact because this requirement is already found in the IGRA, gaming ordinances and the Tribal-State Compact.

However, the provisions of CGCC-8 authorizing the CGCC to conduct undefined "on-site compliance reviews" and requiring tribes to work with the CGCC to resolve any disputed findings of the CGCC's compliance review may pose a significant economic impact on tribal gaming operations, particularly for smaller tribal gaming operations. Costs include the staff time dedicated to producing records and escorting CGCC staff in conducting comprehensive reviews/audits in addition to the cost of audits already being performed. The unrestricted

[2] The absence of the MICS was a product of negotiations among the parties during the compacting process. See footnote 7.

[3] 25 U.S.C. § 2701 et seq.

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compliance reviews contemplated by CGCC-8 could require a tribe to devote a great deal of staff time to responding to the state auditors and their findings.[4]

B. Application to Card Rooms

The CGCC acknowledges that there are no MICS in place for non-tribal gaming facilities in California. Beginning in 2003, the State spent the better part of a year drafting MICS for the card rooms, eventually presenting them to representatives of the card rooms during a meeting in 2004. The reaction was decidedly negative as the State had not consulted with the advisory group of card room executives and attorneys, established for this very type of endeavor, during the year long drafting period and the final product revealed a concerning lack of understanding of MICS in general and how they should be applied to the card rooms. The State's MICS were a conglomeration of the NIGC' MICS and various statutes from Nevada and New Jersey. As of this report in 2008, *five years later*, no further MICS applicable to card rooms have been adopted.

CGCC-8's very existence thus represents a discriminatory approach to gaming regulation by the CGCC, which is all the more troubling because the CGCC has plenary jurisdiction to regulate non-tribal gaming facilities in California. Although the card rooms and tribal gaming facilities have in common some internal operations that inarguably require oversight – such as table games operations, currency drop and count and surveillance – the State does not require card rooms to implement MICS. Indeed, the State puts precious few requirements upon the card rooms such as a gambling license requirement, additional tables' requests and rules regarding third-party providers of proposition player services. This is *not* the case for tribal gaming operations, which have both federal and tribal oversight in addition to state oversight. The failure of the CGCC to impose MICS on non-tribal gaming facilities creates a true regulatory void and one that truly demands the State's immediate attention.

The fact that the CGCC has permitted non-tribal gaming facilities to operate without MICS for years but imposed such standards on tribal gaming operations almost immediately after the *CRIT* decision is telling. It suggests that the CGCC either ignores the fact that California tribes follow the NIGC MICS or does not respect the ability of tribal gaming agencies to enforce such standards, or both. It is disturbing that the State feels no urgency to exercise its unquestioned authority over the billion dollar a year card room industry and apparently feels compelled to impose an ill-advised and unnecessary regulation upon the tribal gaming facilities.

C. Fostering Uniformity

CGCC-8 is not needed to foster uniformity because uniformity already exists. As noted above, a Tribal Regulator Networking Group survey shows that the NIGC MICS remain the minimum standards for California tribes despite the *CRIT* decision.

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[4] In addition, the lack of experience of a newly formed agency conducting these comprehensive reviews/audits may increase the economic impacts.

It may be a little known fact that it was primarily Indian Tribes, including California Tribes, not the States that first supported the adoption of MICS to protect the integrity of Indian Gaming as well as the assets of the Indian Tribes in a uniform manner. Those Tribes who were members of the National Indian Gaming Association (NIGA) in the 1990s initiated what was termed a "MICS Work Group," and Tribes voluntarily offered the services of their professionals including internal auditors, accountants, gaming commissioners, gaming managers, attorneys, etc. to develop a model MICS to be used by any gaming Tribes, especially those Tribes who did not have the expertise and/or resources to develop their own MICS, so that those Tribes which were just starting out would have the ability to protect the integrity of their gaming operations. This NIGA MICS were used voluntarily by Tribes for many years, until the NIGC decided that they wanted to promulgate a Federal MICS. It is a well established fact that a large portion of the first MICS promulgated as a regulation by the NIGC was based primarily upon the product of that MICS Work Group.

In any event, the goal of fostering uniformity is not necessarily one that can or should be expected given the numerous varied Tribal-State Compacts that have been negotiated since the original 1999 Compacts. With respect to the issue of MICS in particular, the four most recently negotiated Compacts include Memoranda of Agreement ("MOA") under which those tribes have agreed to implement the NIGC MICS and to submit to enforcement and auditing by the State Gaming Agency. These concessions were arrived at through Tribal-State Compact negotiations. It is improper for the same requirements to be imposed in blanket fashion on all California gaming tribes under the auspices of a statewide gaming regulation when the MOAs stand as proof that such requirements are in the nature of Compact amendments.

D. Alternatives to CGCC-8

Since circulating its first draft of CGCC-8 in late March 2007, the CGCC has met with strong opposition from tribal gaming regulators on a number of fronts. Most, if not all, Taskforce members questioned the need for the regulation because the State had (and still has) failed to show any deficiency with the status quo. Many Taskforce members also viewed the regulation as a wholesale amendment of the 1999 Compact – and thus the proper subject of renegotiations with the State – rather than an elaboration or clarification of what the Compact already permitted. Nonetheless, in the spirit of good faith, and in response to repeated requests by the CGCC, tribal gaming regulators and tribal attorneys proposed alternatives language to the objectionable portions of CGCC-8 as well as viable alternatives to the regulation itself. The proponents of these alternatives did not purport to speak on behalf of all or even most of the other members of the Taskforce, but hoped to spur discussions that would result in a compromise approach that most of the parties could live with.

The CGCC rejected not only the alternatives to CGCC-8 but also the proposed language that would have left the CGCC's version of CGCC-8 largely intact. A brief description of the proposed alternatives follows.

1. **No CGCC-8: maintain the status quo**

The CGCC proposed CGCC-8 to address the supposed regulatory void created by the *CRIT* decision. Yet, despite repeated requests from Taskforce members, the CGCC failed to show – indeed, made no effort to show – that the State needed greater oversight. This is unsurprising because the existing practices of Tribal Gaming Agencies, coupled with the regulatory regime established by the existing Compacts, ensure that tribal gaming in California meets or exceeds the highest regulatory standards.

California Tribes have adopted the NIGC MICS as their own internal control standards, and submit to annual compliance and financial audits by independent licensed CPAs. These financial audits are submitted to the NIGC pursuant to federal regulations. In addition, Section 8.1.8 of the Compact requires Tribes to conduct "an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants." Moreover, the Compact at Section 7.4 gives the State the right to ensure the independent audit has been conducted by inspecting Class III tribal gaming papers and records.

Tribes in California direct significant funds to fulfilling their role as the primary regulators under the Compact. The Rose Institute of State and Local Government projects tribal gaming commission annual budgets totaling $90,282,837, an average of more than $1.5 million per Tribe. *See* Study of Gaming Regulatory Agency Expenditures of California Tribes, September 2007 at page 5. *Id.* Surveyed Tribes employ 1,833 employees in their gaming agencies, with an average size of 32 employees per regulatory agency. *Id.* Comparing the regulatory budgets of California gaming Tribes and Nevada casinos, the Rose study determined that the Tribes spend more than six times what the Nevada operations spend per machine. *Id.* at page 6 ($1560.85 vs. $241.34).

The CGCC also stated that CGCC-8 would fulfill the objective of securing the State's share of the revenue under the Compacts. (See CGCC 4/6/07 Statement of Need). However, Compacts with percentage revenue sharing provisions already include specific audit provisions negotiated to enable the state to verify accurate payments. Other Compacts provide for flat fee payments to the State rather than payments by percentages based upon net win. CGCC-8 is not necessary for this stated purpose.

2. Individual Compact Amendments & MOAs

From the start, the CGCC's position has been that CGCC-8 does not create any new rights or obligations, but only fleshes out what the State is entitled to under the existing Compacts. Many Tribes disagree, viewing the CGCC's claimed authority to audit class III gaming operations, and to demand the adoption of MICS that equal or exceed those promulgated by the NIGC (to name just two), as the assertion of authority beyond what the Compact allows. Indeed, the State's recent renegotiation of some 1999 Compacts to expressly provide for such authority demonstrates that the State lacks such authority in the absence of Compact amendments. (See Discussion of Legal Authority below.)[5] Accordingly, the most obvious

[5] The State also has negotiated Compact amendments as a means to further its stated interests to confirm tribal gaming integrity and protect citizens. Under these amendments, patrons have the right to independently

alternative to CGCC-8 is for the State to initiate negotiations with each Tribe on a government-to-government basis and seek the new rights and obligations it desires through the Compact's amendment process.

In addition, some tribes have entered into Memorandum of Agreements (MOAs) with the State to provide for MICS adoption and audits by the CGCC. This is another alternative to CGCC-8.

3. Legislative Fix

Another alternative is waiting for the federal government to implement its own *CRIT* fix, which it has been pursuing since shortly after the *CRIT* decision. A federal fix would address the perceived lack of oversight necessitating CGCC-8, and once in place would render any claimed State authority redundant and burdensome. Since all Tribes are continuing to enforce minimum internal control standards that meet or exceed the NIGC MICS, there is no lack of regulation that warrants immediate action by the State.

4. NIGC Oversight Pursuant to Amended Gaming Ordinances

A number of California gaming tribes have amended their gaming ordinances to expressly incorporate the NIGC MICS and to vest the NIGC with authority to enforce tribal compliance with those standards. Other Tribes have indicated their intention to do the same. (Because the *CRIT* decision did not affect the NIGC's authority with respect to financial audits, or alter the existing independent financial audit requirements in Section 8.1.8 of the Compact and 25 U.S.C. §2710(b)(2)(C), and because gaming ordinances already provide for submission of these audits to the NIGC, the amendments would not need to address such audits.) These amendments to gaming ordinances remove the regulatory gap that the State perceives to exist as a result of the *CRIT* decision and the resulting NIGC oversight renders any claimed State authority unnecessary, redundant and burdensome.

5. Agreements between Individual Tribes and the State Gaming Agency

Many Tribes also have indicated a willingness to explore entering into MOAs with the State Gaming Agency, under which an individual Tribe would reaffirm its adherence to internal controls at least as stringent as those established by the NIGC and its willingness to enforce compliance with such standards (whether through its tribal gaming agency or an independent auditor) and to provide the CGCC with certification of that compliance on an annual (or other mutually agreed upon) basis.

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arbitrate disputes over the play or operation of a game if dissatisfied with the resolution of such dispute by management and the TGA. Gaming devices are tested to ensure fairness to patrons by the TGA, independent auditors, and the CGCC, and the results of the independent audit are provided to the CGCC.

6. Alternative Language to CGCC-8 Provisions

a. Rumsey Proposal

The Rumsey Tribal Gaming Agency submitted an alternative to the CGCC's proposed CGCC-8. Under the Rumsey proposal, each tribal gaming agency would maintain a System of Internal Controls ("SICs") that would equal or exceed the agency's established MICS. The CGCC, in turn, could ensure the Tribe's compliance with the SICs by conducting compliance reviews of the Tribe's gaming operation, including its table games (if applicable). The CGCC would then provide a written DRAFT report of its findings to the Tribe, which could either accept or dispute. Disputes that could not be resolved informally or by the full CGCC would then be subject to the dispute resolution process outlined in Compact Section 9.0.

b. Attorney Work Group Proposal

Circulated by a group of attorneys for a handful of Taskforce members, the attorney work group ("AWG") draft would have accepted many of CGCC-8's provisions, including the requirement that each TGA adopt MICS standards applicable to Class III gaming equal to or more stringent than those established by the NIGC. The AWG draft also would have acceded to the CGCC's desire for greater State oversight by agreeing to provide the State Gaming Agency with copies of the financial audits and MICS Agreed-upon Procedures Reports of the Tribes' Class III gaming operations performed by independent, California-licensed CPAs, as required under IGRA. Pursuant to this draft, the CGCC would also have access to the CPA's Agreed-upon Procedures work papers, the reports and work papers of the internal audit staff, CPA observation checklists, findings by the CPA and internal audit, any exceptions and responses to those exceptions.

Pursuant to this AWG draft, if the Agreed-upon Procedures Report failed to conclude that the gaming operation was in compliance with required written internal control standards, then audited corrective action plans were mandated with CGCC input into those plans. If the plans were not complied with, then the CGCC could conduct its own compliance audit.

The AWG also proposed a more detailed dispute resolution provision than the one suggested by the CGCC, which proposed that any disputes concerning the regulation would be "referred to the full CGCC for review and decision" and then, if necessary, resolved pursuant to the Compact's dispute resolution provisions. The AWG's proposed alternative regulation maintained the State's authority to decide a dispute initially, but would have allowed a Tribe to submit an adverse ruling to binding arbitration, followed by, if necessary, an action to enforce the arbitrator's award in a court of competent jurisdiction. If a Tribe refused to comply with an arbitrator's decision, the State could invoke the Compact's dispute resolution provisions.

Finally, the AWG proposed a Sunset Provision providing that CGCC-8 would not apply to any gaming operation over which the NIGC exercises jurisdiction to monitor and enforce Class III MICS, and that the Tribe would provide to the CGCC a copy of the report issued by the NIGC.

E. Legal Authority

California does not have civil regulatory jurisdiction on Indian land absent a federal statute expressly conferring jurisdiction on the state. Public Law 280 did not confer such jurisdiction.[6] The only state civil regulatory jurisdiction that exists over a California Indian casino is through a Tribal-State Gaming Compact negotiated pursuant to IGRA. The Compact, at Section 8.2, expressly provides nothing therein affects the civil or criminal jurisdiction of the state under Public Law 280.

The CGCC cites to Compact Sections 8.4.1, 8.1.8, and 7.4 as the legal authority for CGCC-8. (*See* CGCC "Statement of Need for adoption of Regulation regarding Minimum Internal Control Standards (CGCC-8)," dated April 6, 2007). However, none of these Compact Sections provide legal authority for the requirements the CGCC seeks to impose on Tribes and Tribal Gaming Agencies through CGCC-8, which would require adoption of internal control standards at least as stringent as the federal MICS, submission of the financial audit to the CGCC, and submission to financial and MICS compliance reviews/audits by the CGCC.

The Compact at Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of such regulations is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state" *so that "rules, regulations, standards, specifications, and procedures of the Tribal Gaming Agency* in respect to any matter encompassed by Sections 6.0, 7.0, and 8.0 shall be consistent" with that regulation adopted by the state pursuant to Section 8.4.1. Further, neither the State Gaming Agency nor the Association may adopt regulations that materially alter express provisions of the Compact or render any such provisions void or a nullity.

Section 8.1 states that the Tribal Gaming Agency is vested with the authority to, and must, promulgate rules, regulations or specifications ("rules") governing a series of topics, which do *not* include a requirement to adopt or enforce the MICS. There is no Compact provision that refers to the MICS.[7] Simply put, Section 8.4.1 does not authorize a uniform state regulation on the MICS because it is not a matter encompassed by Section 6, 7, or 8 of the Compact.

Moreover, even *if* the MICS had been included in Section 8.1, there is no legal authority to include in CGCC-8 a compliance review/audit of a casino's compliance with the MICS. Section 8.1 expressly provides "the Tribal Gaming Agency shall be vested with authority" to promulgate rules governing the topics in Section 8.1.1 through 8.1.14 and to ensure their enforcement in an effective manner. Section 8.1 is a recognition of Tribal Gaming Agency jurisdiction over these areas. *Nothing in Section 8.1 confers jurisdiction on the state to enforce*

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[6] See Act of Aug. 15, 1953, ch. 505, 67 Stat. 588 (codified as amended at 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. § 1360).

[7] The fact that the MICS was not included is no accident. At the time of the Compact negotiations, the National Indian Gaming Commission had promulgated federal minimum internal control standards, required tribes to adopt tribal standards that meet or exceed those federal standards, and enforced compliance with the foregoing. Also, while some tribes took the position that NIGC lacked jurisdiction under IGRA, California tribes adopted MICS and the NIGC actively enforced the MICS. Tribes continue to enforce tribally adopted MICS. The State does not have, and has never had, regulatory authority over these tribal MICS. Therefore, any State regulatory authority in this area must come about through Tribal-State Compact negotiations.

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the Tribal Gaming Agency rules pertaining to the gaming operation. Compact Section 7.1 provides that it "is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact."

The Compact could have directly required the gaming operation to comply with specified requirements on the subjects of Section 8.1.1 through 8.1.14 and could have provided state jurisdiction to enforce those requirements. Instead, the Compacts recognize the primacy of the Tribal Gaming Agency and in Section 8.1 expressly reserves to the Tribal Gaming Agency the authority over enforcement of compliance of the gaming operation with the rules it has adopted pursuant to Section 8.1.

Nor does Section 7.4 confer this jurisdiction. Under Section 7.4, the state may inspect gaming facility Class III records where reasonably necessary to ensure compliance with the Compact. Section 7.4 cannot be read to negate Section 8.1, which expressly provides for Tribal Gaming Agency's authority and jurisdiction for enforcement. Instead, Section 7.4 authorizes the state to review the rules governing the subjects of Section 8.1.1 through 8.1.10 to ensure such rules are in place and to review whether the Tribal Gaming Agency has a mechanism in place to ensure enforcement in an effective manner. Indeed, the State Gaming Agency has been conducting this type of compliance review for years through the California Department of Gambling Control (now the Bureau). The CGCC also recognized the limitations in the 1999 Compacts when it asserted in its budget change proposal for fiscal year 2006-2007 that the state has "restricted access to financial reports and information related to internal controls over gaming devices and gaming device revenues. California has limited Compact authority."[8]

In short, Section 7.4 and its subsections do not authorize the CGCC to establish minimum internal control standards for tribal gaming operations, do not authorize the CGCC to mandate that Tribal Gaming Agencies submit copies of tribal internal control standards and annual audits (financial or MICS-related) to the CGCC, and do not authorize the CGCC to conduct the comprehensive and unrestricted compliance reviews contemplated under CGCC-8, or require Tribes to engage in steps to address the CGCC's review findings.

Finally, Section 8.1.8 requires the Tribal Gaming Agency to adopt a rule requiring an independent CPA to conduct a financial audit at least annually and to ensure enforcement in an effective manner. Since these sections clearly establish the Tribal Gaming Agency as the responsible authority for regulating the annual independent financial audit of the tribal gaming operation, Section 8.1.8 does not provide legal authority for the CGCC to require submission of the financial audit report or to conduct compliance reviews/audits of the financials or of audited financial statements. In fact, the Compacts contain specific audit provisions for the State to verify revenue share, which clearly would have been unnecessary if the financial compliance review/audit proposed by CGCC-8 was authorized under the Compact.

In sum, CGCC-8 cannot confer civil regulatory jurisdiction to the state that was not conveyed by the Compact. As such, CGCC-8 is an unauthorized extension of the state's authority under the Compact. In the absence of legal authority, the provisions of CGCC-8

[8] State of California Budget Change Proposal For Fiscal Year 2006-2007 submitted to Department of Finance, at page 1-8.

amount to material amendments of the Tribal-State Compacts. As such, they must be negotiated between the State and the Tribe pursuant to section 12.1 of the Compact. Indeed, the fact that the 1999 and 2004 Compacts do *not* authorize the state to require MICS adoption, submission of financial audits, or to conduct MICS and financial compliance reviews/audits is evidenced by new compacts and new memorandum of agreements specifically including these provisions.

F. Duplicative

In his letter of March 30, 2007 to the U.S. Senate Committee on Indian Affairs ("Committee"), Governor Schwarzenegger told the Committee that "[California's] approach with the compacts and state oversight of internal controls has been to complement, rather than duplicate, NIGC's activities." CGCC-8 is entirely inconsistent with the Governor's unequivocal message to the Committee.

CGCC-8 is needlessly duplicative in several respects. As stated above, the *CRIT* decision did not alter the existing federal requirements for annual external financial audits found at 25 U.S.C. § 2710(b)(2)(C) or affect in any way the NIGC's regulatory authority over the conduct and results of such audits. Section 8.1.8 of the 1999 Compact (and comparable sections of the new or amended Compacts) place the responsibility for conducting the annual outside audit on the Tribal Gaming Agency[9], an approach consistent with the federal requirement. Thus, the financial audit requirements contemplated by CGCC-8 are already in place, with NIGC oversight, and would be entirely duplicative of existing tribal and federal activities.

Additionally, the initial "Statement of Need" for CGCC-8 stated that the proposed regulation would "guarantee that [the State's] interest in the revenue sharing that is a part of each compact is secure." However, all Compacts with percentage revenue sharing provisions already include specific audit provisions negotiated to enable the state to verify that such tribal payments are accurate. (See, for example, sections 5.3(c) and (d) of the 1999 Compacts.) Thus, these provisions of CGCC-8 needlessly duplicate existing Compact requirements.

With respect to its MICS-related provisions, CGCC-8 is duplicative in that tribes already have in place standards at least as stringent as the NIGC MICS, and these standards are enforced by Tribal Gaming Agencies. In addition, in recent weeks a number of California gaming tribes have amended their Tribal Gaming Ordinances[10] to expressly incorporate the NIGC MICS. By so doing, those tribes have granted the NIGC authority to monitor and enforce tribal compliance with those standards, up to and including the authority to close non-conforming facilities, under 25 U.S.C. § 2713 and 25 CFR pt. 542.3(g). The first of these ordinance amendments were approved by the Chairman of the NIGC, and went into effect, in January, 2008. A number of

---

[9] Section 2.20 of the 1999 Compacts, and similar sections of the new or amended compacts, define "Tribal Gaming Agency" as the person, agency, board, committee, commission, or council designated under tribal law, including, but not limited to, an intertribal gaming regulatory agency approved to fulfill those functions by the National Indian Gaming Commission, as primarily responsible for carrying out the Tribe's regulatory responsibilities under IGRA and the Tribal Gaming Ordinance.

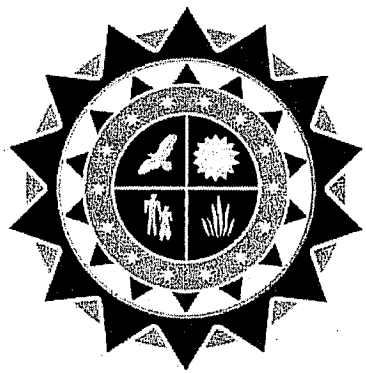
[10] Section 2.10 of the 1999 Compacts, and similar sections of the new or amended compacts, define "Gaming Ordinance" as a tribal ordinance or resolution duly authorizing the conduct of Class III Gaming Activities on the Tribe's Indian lands and approved under IGRA.

additional tribes have announced their intention to similarly amend their Gaming Ordinances in the near future.

With respect to these tribes in particular, and with respect to all tribes if and when Congress adopts "CRIT-fix" legislation, the MICS-related provisions of CGCC-8 needlessly duplicate tribal and federal regulatory activities with no offsetting benefit.

III. Recommendation

For the foregoing reasons, the Association Regulatory Standards Taskforce recommends that the Association find that draft CGCC-8, as presented to the Taskforce for consideration, is unnecessary, unduly burdensome, and unfairly discriminatory. Accordingly, CGCC-8, as drafted, should not be adopted as a proposed regulation for presentation to the Association. Furthermore, if the draft proposed regulation is adopted and presented to the Association, the Taskforce recommends that the Association disapprove CGCC-8.



TRIBAL ALLIANCE OF SOVEREIGN INDIAN NATIONS

A Study of Gaming Regulatory Agency Expenditures of Tribes in California

Prepared by
The Rose Institute of State and Local Government
At Claremont McKenna College
For
The Tribal Alliance of Sovereign Indian Nations

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September 10, 2007

Enclosure (2) 177

The following report will provide an overview of the current regulatory status and expenditures of tribes operating casinos surveyed from members of the State of California Tribal Regulator Networking Group. This overview includes the budget numbers and the number of employees within the gaming regulatory agencies that regulate the gaming operations of the tribes in the study. We will first elaborate on the provisions of the compacts and pertinent state law to demonstrate the nature of the relationship between the sovereign tribal governments and the state and federal governments. We will then look at the tribal budgets that are allotted for the tribal gaming regulatory agencies.

The California Compacts and Pertinent State and Federal Law

As affirmed by the United States District Court of the District of Columbia in *Colorado River Indian Tribes v. National Indian Gaming Commission*, 383 F. Supp. 2d 123; 2005 U.S. Dist. LEXIS 17722, the California Compacts (and the compacts in any state) are the necessary tool to authorize Class III gaming on tribal lands and allow the state, through good-faith negotiations, to accommodate their interests in the regulation of the said gaming. Under the provisions of the Indian Gaming Regulatory Act, a federal statute passed in 1987, Class III gaming is lawful on Indian lands only if:

- The tribe has authorized such gaming by an ordinance approved by the Chairperson of the National Indian Gaming Commission (NIGC);
- The laws of the state in which gaming is to be conducted permit such gaming by any person or entity for any purpose;
- The gaming has been authorized by a tribal-state compact that has been signed by the state and the tribe, approved by the Secretary of State, and approved by the Secretary of the Interior.

Congress concluded that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity" (*Id.* at § 2701[5]). IGRA establishes three gaming classifications. *Class I* gaming consists of traditional games and is regulated exclusively by Indian tribes. *Class II* gaming includes games such as "bingo" and "pull-tabs," and *Class III* gaming includes all other forms of gaming, including casino games such as blackjack, craps and roulette, and slot machines.

In order to engage in Class III gaming, a tribe must adopt a tribal gaming ordinance that meets certain federal standards and is approved by the Chairman of the NIGC (*See* 25 U.S.C. § 2710 [2002]). Despite the decision in *Colorado River Indian Tribes v. National Indian Gaming Commission,* the NIGC continues to have substantial responsibilities over Class III gaming, including the authority to issue fines or closure orders for violation of IGRA or NIGC regulations, NIGC-approved gaming ordinances, and tribal-state compacts.

The state has a legitimate interest in the effective regulation of gaming; however, the state is banned from using the compacting process to attempt to increase its jurisdiction in Indian Country. Congress specifically blocks states from using the compacting process to extend their jurisdiction into areas not reasonably necessary for the effective regulation of Class III gaming. The compacts are not contracts between the state and private entities. Tribal-State Class III gaming compacts are agreements between the state and separate sovereign tribal governments. The compacts have the force of state, tribal, and federal law because the legislature, the tribe, and the Secretary of Interior all agree to the provisions of the compact.

On September 10, 1999, fifty-seven federally recognized tribes entered into compacts with the State of California. Each compact is a separate, independent agreement between a single tribe and the state. In March 2000, the voters of California passed Proposition 1A by an overwhelming margin, and that law now appears in the California Constitution as Article 4 Section 19(f). The Secretary of the Interior then approved the compacts as required under IGRA, and it went into effect in May 2000. That compact provides, in relevant part, as follows:

> (a) Each tribe must create a gaming regulatory agency, known in the compact as a Tribal Gaming Agency (TGA), to carry out the tribe's regulatory responsibilities (*See* Compact §§ 2.20, 6, 7).
>
> (b) The State has formed two State Gaming Agencies, including the California Gambling Control Commission and, within the California Department of Justice, the Division of Gambling Control under the Gambling Control Act (*See* Compact §§ 2.2 and 2.18).
>
> (c) The Compact requires a cooperative approach to the regulation of each Tribe's governmental gaming operation, with primary regulatory jurisdiction and responsibility vested in each Tribe.

The Compact created a negotiated regulatory framework in which each Tribal government exercises primary and significant regulatory jurisdictional rights and duties, and the State (including the Commission and Division) fulfills specifically defined oversight and other functions. Where the Compact does not expressly designate a role for the State with respect to implementing a particular procedure, regulation of that activity remains within the exclusive jurisdiction of the Tribal government, subject to IGRA.

An intergovernmental "Association" was established in the Compact for the purpose of developing regulations. The Association included a selection of California tribal and state gaming regulators, the membership of which comprises up to two representatives from each TGA of those tribes with whom the State has a gaming compact under IGRA, and up to two delegates each from the Division of Gambling Control and the California Gambling Control Commission (Compact § 2.2).

The Association has adopted a protocol for the manner in which it will conduct its approval of proposed regulations.

The tribal compacts that then-Gov. Gray Davis signed in 1999 show that while the California Gambling Control Commission has a role in gaming oversight, the tribal gaming regulatory agencies are primarily responsible for the day-to-day regulation of gaming operations. Section 7.1 of the Tribal-State Compact says,

> Sec. 7.1. On-Site Regulation. It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

Section 7.4 of the same compact elaborates on the role that the State Gaming Agency should play in relation to the individual tribal gaming regulatory agencies. It says,

> [T]he Tribe has the primary responsibility to administer and enforce the regulatory requirements of this Compact, [and] the State Gaming Agency shall have the right to inspect the Tribe's Gaming Facility with respect to Class III Gaming Activities only, and all Gaming Operation or Facility records relating thereto[.]

According to the language of the compacts, the tribes, rather than the California Gambling Control Commission, should be the primary arbiter and enforcer of gaming related issues and regulations.

Section 8.1.8 of the compact requires tribes to conduct "an audit of the Gaming Operation, not less than annually, by an independent certified public accountant, in accordance with the auditing and accounting standards for audits of casinos of the American Institute of Certified Public Accountants."

The California Gambling Control Act provides guidelines for the California Gambling Control Commission. Sections 19810 and 19811 establish that the California Gambling Control Commission consists of five members that the governor appoints and the Senate confirms. Subsection B of Section 19811 says,

> (b) Jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments is vested in the commission.

Further sections of the California Gambling Control Act elaborate on the major aspects of gaming that the Commission should oversee, such as licensing and periodic checks on compliance of the rules specified under the compacts and the Gambling Control Act (specifically in sections 19823 and 19824). In summary, the California Gambling Control Commission's major duties under the compacts and the Gambling Control Act include licensing requirements and compliance and monitoring functions, but the tribal gaming regulatory agencies have the primary responsibility for gaming regulation. Therefore, it is important to study how the tribes are carrying out this responsibility.

The Budget of the Tribes' Gaming Regulatory Agencies: An Overview[1]

The 64 tribes that are covered in the following report have projected gaming commission annual budgets totaling $90,282,837. The tribes have a projected average annual gaming regulatory budget of $1,556,600. The regulatory budgets range from $12,000 to $4,600,000. The gaming regulatory agencies of the surveyed tribes employ approximately 1,833 employees total; the average size of each individual tribe's gaming regulatory agency is 32 employees—4 of whom, on average, have previous law enforcement experience.

	Surveyed	Projected	Average
Commission Annual Budget	$54,644,809	$90,282,837	$1,556,600
Number of Gaming Regulatory Agency Employees	1,276	1,833	32
Number of Employees With Law Enforcement Experience	107	225	4
Number of Machines	47,812	64,543	1,113
Commission Annual Budget Per Machine	$1,143	$1,399	---

The tribes represented in this report operate 64,543[2] machines in their casinos. Each tribal regulatory commission has a projected annual budget of $1,399 per machine.

The State of California and the California Gambling Control Commission have a legitimate interest in regulating gaming activity. As IGRA and the compacts point out, however, the tribal gaming regulatory agencies have the primary role in gaming regulation.

Our study shows that the tribes in California directed significant funds and energy toward this end. Moreover, it should be noted that all tribes that currently operate tribal casinos and responded to the survey reported that they did *not* eliminate their Minimum

[1] All projections are derived from the data provided by the State of California Tribal Regulator Networking Group (who conducted a survey of its membership, 46 of whom responded) to the Rose Institute of State and Local Government. The reported results are estimated using bivariate and multivariate regression models. Of the 64 tribes covered in this report, only 57 currently operate a tribal casino, with 1 opening a casino in the first half of 2008. Thus, only these 58 are taken into account in making the projections and averages. Furthermore, projected values are used when calculating averages.

[2] This figure is not a projection; rather, it is the actual number of machines operated by the 58 tribes taken into account in this study. The number was calculated by adding the number of machines listed for each tribal casino in the *Casino City's North American Gaming Almanac 2006-2007 Edition.*

Internal Control Standards (MICS) as a result of the *Colorado River Indian Tribes* decision.

Gaming Regulatory Resources: A Comparative Perspective

To provide further context in which to consider the scale of regulatory activities and resources in California, the most natural comparison is to the neighboring state of Nevada, where most forms of gaming have been legal since 1931.

	California	Nevada
Total Number of Machines	*64,543*[3]	*172,318*[4]
Number of Tribal Gaming Regulatory Agency Employees (Projected)	1,833	---
Number of State Gaming Regulatory Agency Employees (FTE)	63[5]	461[6]*
Total Gaming Regulatory Agency Employees	*1,896*	*461*
Tribal Gaming Commission Annual Budget (Projected)	$90,282,837	---
State Gambling Control Commission Annual Budget	$10,459,000[7]	$41,586,720[8]
Total Regulatory Budget	*$100,741,837*	*$41,586,720**
Number of Statewide Regulatory Employees per Machine	**0.0293758**	**0.0026579**
Statewide Regulatory Budget per Machine	**$1560.85**	**$241.34**

[3] *Casino City's North American Gaming Almanac 2006-2007 Edition.*
[4] *Casino City's Nevada Gaming Almanac 2006 Edition.*
[5] *California Gambling Control Budget*, available at: http://www.ebudget.ca.gov/pdf/GovernorsBudget/0010/0855.pdf
[6] *Nevada Gaming Control Board Budget*, available at: http://budget.state.nv.us/budget_2007_09/budget_book/2007-2009%20Executive%20Budget_GAMING%20CONTROL%20BOARD.pdf (Governor recommended number for 2007-2008.)
[7] *California Gambling Control Budget.*
[8] *Nevada Gaming Control Board Budget.* (Governor recommended number for 2007-2008.)

* Nevada casinos may have some compliance personnel that perform functions similar to those performed by tribal government operations. As these are not government expenditures (and not readily available) they are not included herein.

TWENTY-NINE PALMS BAND OF MISSION INDIANS
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November 14, 2008

2008 NOV 21 PM 4:05

VIA U.S. MAIL
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, 95833-4231
Attn: Chairman Dean Shelton

Re: Re-Adoption of CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The Twenty-Nine Palms Band of Mission Indians (Tribe) provides the following responses to the California Gambling Control Commission's (CGCC) re-adoption of proposed uniform CGCC-8.

The Tribe is greatly concerned in that the CGCC has decided to re-adopt CGCC-8 despite the overwhelming opposition and disapproval by the Tribal State Association after a very lengthy review period. Specifically, the CGCC was privy to, over the course of some twenty (20) months ,numerous arguments against CGCC-8's implementation and adoption in various forms and CGCC-8's structural flaws. To this end the CGCC has so far failed miserably in its attempt to both justify the need for CGCC-8 and its re-adoption as a regulation, but most disturbing is the announced intent to promulgate CGCC-8 outside the agreed upon procedures for implementing gaming regulations in conjunction with the Tribal-State Association (Association), contained in the various versions of the Tribal-State Compact.

First, the means of re-adoption and the CGCC's refusal to submit CGCC-8 to the Association for a vote of approval is inconsistent with the language of the 1999 Tribal-State Compact (Compact), contractual language that the Tribe agreed to with the State of California and relies upon, which specifically states:

> "...no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation..." [1]

This simple two-part process could not be clearer. However, the apparent failure of the CGCC to forward the re-adopted version of CGCC-8 to the Association following the CGCC's re-adoption for the requisite approval is most troubling to the Tribe and smacks of both unilateralism and paternalism, and is shameful in light of the lessons learned

[1] See Tribal-State Compact at Section 8.4.1 (a).

during the State's infancy, during the State's early years of its dealings with Indians.[2] If the Tribe cannot rely on the agreed upon Compact language of Section 8.4.1, in its entirety, for practical purposes the Tribe cannot reasonably rely on the State to honor *any* of its commitments or language contained within the Tribe's Compact or the various Compacts in existence.

Second, the CGCC cannot justify the need for CGCC-8. In its Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)[3], the CGCC makes various justifications for the implementation of CGCC-8, which include: the presumed vacuum in regulation left by the Colorado River Indian Tribes decision; the State Gaming Agency's Authority under the various Compacts, Applications outside Tribal Gaming, uniformity in regulations, absence of alternatives to regulation and regulatory duplication. These points are discussed in detail below.

i. The CRIT Decision

In its support of CGCC-8 the CGCC argues that the Colorado River Indian Tribes (*CRIT*) decision and a supposed "vacuum" in regulation is the chief component for the policy rational behind the implementation of CGCC-8. However, this rational is misguided and although the *CRIT* decision held that the National Indian Gaming Commission (NIGC) lacked the authority to promulgate or enforce Minimum Internal Control Standards for Class III gaming, under basic contract law, the decision cannot unilaterally, nor does it, alter the terms of any of the Tribal-State Compacts.[4]

The State could have addressed its MICS concerns at the time of entering its 1999 Tribal-State Compact with sixty-one (61) tribes, but it failed to do so. Additionally, in subsequent compacts, the State also failed to include any reference to or negotiate for MICS provisions until 2006—and in doing so, MICS was included as a negotiated bargained for exchange. Thus, in the absence of the State demonstrating a concern for MICS, introduction of the CGCC-8, some nine-years after signing its initial Tribal-State Compact, is unjustified. Moreover, the absence of any need for a State mandated MICS within the last nine (9) years is telling and infers that until the CGCC's introduction of CGCC-8, the State believed whole heartedly that the Compact provided the Tribes with the primary responsibility over tribal gaming regulation, including MICS.

Additionally, included within its *CRIT* premise of need is that CGCC-8 is required to preserve independent oversight of Tribal MICS compliance, which will in turn increase public confidence in tribal gaming. The CGCC has not provided any evidence demonstrating a lack of independent oversight within tribal gaming, or evidence that the

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[2] It should be noted that when the Association previously disapproved a different proposed regulation, specifically CGCC-7, consistent with Section 8.4.1, the CGCC revised the disapproved regulation addressing noted deficiencies, re-adopted the revised version and then appropriately presented CGCC-7 back to the Association for approval prior to being sent to the tribes for comment and ultimately implemented.

[3] See CGCC's Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8).

[4] See *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).

public lacks confidence in any of the games or devices operated by California tribes. Alternatively, the results of the Tribal Regulators Networking Group survey indicate otherwise, that the NIGC's federal MICS remains the standard for tribal gaming operations in California, notwithstanding *CRIT*.[5] Additionally, the general public is likely unaware of the purpose or existence of MICS and to allege that public confidence will increase due to the implementation of CGCC-8 is unsupportable.

Finally, the CGCC's use of the *CRIT* decision as the basis of CGCC-8's implementation also fails to address the regulations inclusion of financial audits. The *CRIT* decision does not touch upon nor address the role assumed by the NIGC concerning financial audits nor does the decision alter and/or modify the requirement of a yearly independent financial audit as set forth under Section 8.1.8 of the Compact and Indian Gaming Regulatory Act (IGRA) at 25 U.S.C. 2710(b)(2)(C).[6] As this federal requirement remains untouched by the *CRIT* decision, there appears to be no legitimate reason for the inclusion of financial audits within CGCC-8.

ii. Legal Authority

The CGCC cites to Compact Sections 8.4.1, 8.1.8 and 7.4 as the legal authority for implementing CGCC-8. (See CGCC "Statement of Need for Adoption of Regulation regarding Minimum Internal Control Standards (CGCC-8)," dated April 6, 2007). However, none of these Sections provide any legal authority for CGCC to unilaterally impose CGCC-8 upon the Tribes outside of the agreed upon procedures set forth in Section 8 of the various compacts.

Compact Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of this regulatory adoption process is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state "so that 'rules regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0 and 8.0 shall be consistent." Thus, in the absence of complying with Section 8.4, uniformity in gaming regulations is compromised. Additionally, nowhere within the Compact does it provide the State the authority for unilateral adoption of regulations or to materially alter express provisions of the Compact or render any provisions null, void or unnecessary.

Materially altering express provisions of the Compact and or interpreting it in a manner wholly inconsistent with the written Compact language is exactly what the CGCC is attempting to accomplish to justify its adoption of CGCC-8. In its October 1, 2008 Explanatory Summary of Proposed Changes to CGCC-8 Minimum Internal Control Standards (MICS)(Amended Form Dated October 1, 2008) to be Considered at the October 14, 2008 Meeting, CGCC Chief Counsel, Evelyn M. Matteucci, referenced the *Boghos v. Certain Underwriters at Lloyd's of London* case in support of the proposition that the CGCC may adopt CGCC-8 outside the process set forth in the various forms of

[5] See attached Tribal Regulators Networking Survey
[6] 25 U.S.C §2710 et seq.

the Compact.[7] However, a review of the *Bogus* case, at footnote 1, ironically states that "where language is clear and express, it governs."[8] A review of Section 8.4 indicates there exists no ambiguity within the express written language requiring the interpretation permitted by *Bogus*, much less interpretation and/or deviation from the express and unambiguous language set forth by the various Compacts. In short, Mrs. Matteucci 's Compact interpretation and language wizardry is nothing more than a half hearted attempt to create a favorable legal interpretation and cloud the meaning of an otherwise perfectly clear regulatory approval process.

iii. Applications Outside Tribal Gaming

The CGCC readily admits that there presently exist no MICS provisions for any other form of gaming within the State of California. And although the State spent time and effort drafting MICS provisions for California's cardrooms, the cardroom industry and its various working groups, arrived at the conclusion that the final product revealed a lack of understanding of the purpose of MICS and how they should be applied in a cardroom environment. Moreover, the MICS provisions presented were a composite of NIGC's MICS and various other MICS statutes from other gaming states. As of the date of the February 2008, Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8 report, some five years after the State's 2003 attempt to draft MICS provisions, no cardroom MICS provisions have been adopted.

Ironically, concerning cardroom regulation the CGCC has *plenary* authority to adopt and implement MICS upon non-tribal gaming facilities throughout California. And although cardrooms and tribal gaming facilities have similar operational requirements, namely table games operations, currency drop and count and surveillance departments, the State does not, nor has it required, card rooms to implement MICS provisions. The fact that CGCC has permitted cardrooms to operate without MICS is both telling and discriminatory. It is also disturbing that the State does not act when it has *plenary* authority over a billion dollar cardroom industry, but affirmatively acts to impose its will upon California's tribal gaming industry, when it lacks the authority to do so.

iv. Uniformity in Regulation

The CGCC next alleges that CGCC-8 will "foster uniformity" within California's tribal gaming regulatory environment. CGCC-8 is not required to foster uniformity, because uniformity already exists. A Tribal Networking Group survey indicates that NIGC MICS remain the minimum standards for internal controls for California Indian tribes, despite the *CRIT* holding. Moreover, the fact is that Indian tribes, including California tribes, first supported the adoption of MICS to protect the integrity of Indian gaming as well as protecting tribal assets, the very heart of the purpose and policy of Indian gaming as set forth under the IGRA. Those tribes who were members of the National Indian Gaming Association (NIGA) in the 1990's initiated what was referred to as the "MICS Work Group", and tribes voluntarily offered the services of their professionals, including

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[7] *See Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495)
[8] *Bank of the West v. Superior Court* (1992) 2. Cal.4th 1254, 1264.

internal auditors, accountants, gaming commissioners, managers, attorneys, etc, in developing a model MICS to be used by gaming tribes.

This model of cooperative MICS adoption is in stark contrast to the draconian adoption of MICS outside the legal parameters of adoption included in the various Compacts and which again smacks of unilateralism and paternalism. Moreover, compact regulatory uniformity will be very difficult to accomplish given the state's penchant for negotiating compact provisions with different goals and objectives. If the state truly wanted to create uniformity in regulation, it should have continued to use the 1999 model compact as opposed to deviating from it.

If the state, after permitting uniformity to go by the wayside, wishes to advance uniformity in regulation, it may do so by requesting each tribe adopt the NIGC MICS via compact amendments, as it recently did so with four re-negotiated compacts. These compacts included a Memorandum of Agreement (MOA) whereby the tribes agreed to implement the NIGA MICS and submit to enforcement and auditing by the State Gaming Agency. Absent arms length negotiations as noted by these recent compact amendments, the unilateral adoption of CGCC-8 is unnecessary. Moreover, the use of MOA's is proof that there is a viable alternative to addressing the State's MICS concerns outside of CGCC-8.

Pursuant to the terms of the Compact, the best and most appropriate approach to addressing the State's MICS concerns would be through compact negotiations with the Tribe—not through regulatory and political bureaucracy. Moreover, addressing the State's MICS concerns through an amendment of the Compact is the only true means of maintaining respect for tribal sovereignty, and is consistent with the State's established practice in dealing with other California gaming tribes. In the absence of respecting tribal sovereignty, the Tribe will have no choice but to seek all means of protecting and defending its interests from what the Tribe believes is a unilateral and unnecessary expansion of the State's regulatory role over tribal gaming through the proposed CGCC-8.

v. Alternatives to CGCC-8

Presently, California tribes are overwhelmingly opposed to CGCC-8. Additionally, as noted in the Detailed Response to Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8), seven tribes, and the California Department of Justice-Bureau of Gambling Control, provided comments opposing the CGCC's implementation of CGCC-8 in a manner that is both inconsistent with the express written provisions of the various Compacts and in a manner that is disrespectful to the tribes themselves.[9] Both the tribes and Department of Justice made suggestions varying from No CGCC-8, to individual compact amendments and/or MOA's, legislative fixes, NIGC oversight and agreements between the State, tribes and CGCC. These alternatives are telling, and

[9] See Tribal and Department of Justice-Bureau of Gambling Control, correspondence, included in the CGCC's Detailed Response to Association Objectives to Minimum Internal Control Standards (MICS) (CGCC-8), Exhibits A-1-A-8.

demonstrate a willingness by California tribes to engage the CGCC in its MICS concerns and attempt to formulate a reasonable and acceptable means of both addressing MICS and implementing and imposing it upon themselves.

Finally, CGCC-8 provides for an unequivocal expansion of the CGCC's oversight role by impermissibly establishing State mandated MICS—which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact. Moreover, the Tribe finds that CGCC-8 is entirely unnecessary, unduly burdensome and duplicative in light of the requirements contained in the Tribe's Gaming Ordinance (Ordinance). Specifically, on January 11, 2008, the NIGC Chairman, in accordance with the IGRA, approved an amendment to the Ordinance which provides for and maintains the "status quo" between the Tribe and the NIGC with regard to MICS compliance and enforcement pursuant to 25 CFR 542.3(g). Therefore, in light of this recent amendment, the Tribe firmly believes the doctrine of federal preemption will preclude the CGCC from enforcing a unilaterally adopted State MICS on the Tribe. Furthermore, the Ordinance is entirely consistent with the agreed upon duties and authority granted to the Tribe's gaming agency pursuant to Compact Section 8.1. A Copy of the Ordinance amendment and relevant correspondence with the NIGC is attached hereto for your information and consideration.

The Tribe opposes CGCC-8 and additionally incorporates by reference those deficiencies and objections noted in the February 2008, Association Regulatory Standards Taskforce Final Report.[10] We respectfully urge the CGCC, to consider the above when advancing and considering the imposition of CGCC-8 upon the Tribe. We hope you reconsider your position and that the State immediately change course and address MICS in the only appropriate manner—through government-to-government negotiations in accordance with the IGRA.

Sincerely,

Darrell Mike

Darrell Mike, Chairman
Twenty-Nine Palms Band of Mission Indians

cc: Norm Hansen, Chairman, Twenty-Nine Palms Gaming Commission
Philip Hogen, Chairman, National Indian Gaming Commission
Jerry Brown, Attorney General, State of California
Matthew Campoy, Acting Director, Bureau of Gambling Control
Rosette & Associates, PC

[10] See Attached February 13, 2008, Association Regulatory Standards Taskforce Final Report.

Via U.S. Mail and Facsimile

JAN 11 2008

Darrell Mike, Chairman
Twenty-Nine Palms Band of Mission Indians
555 South Sunrise, Suite 200
Palm Springs, CA 92264

Gary Kovall
Attorney at Law
74090 El Paseo, Suite 202
P.O. Box 3291
Palm Desert, CA 92261
Fax: (760) 773-0554

RE: Amendment to Twenty-Nine Palms Band of Mission Indians Gaming Ordinance

Dear Chairman Mike and Mr. Kovall:

On December 12, 2007, Mr. Kovall on behalf of the Twenty-Nine Palms Band of Mission Indians (Band) requested that the National Indian Gaming Commission (NIGC) review and approve the Band's amendment to the Twenty-Nine Palms Band of Mission Indians Gaming Ordinance (Gaming Ordinance). The Band amended the Gaming Ordinance on December 5, 2007, via Resolution No. 120507. In this amendment, the Band clarified its compliance with NIGC Minimum Internal Control Standards (MICS) for Class II and III gaming.

This letter constitutes approval of the amendment because nothing therein conflicts with the requirements of the Indian Gaming Regulatory Act (IGRA) and the Commission's regulations.

Thank you for submitting the amendment for review and approval. If you have any questions, please contact Staff Attorney Rebecca Chapman at (202) 632-7003.

Sincerely,

Philip N. Hogen
Chairman

GARY E. KOVALL
Attorney At Law

December 12, 2007

Philip N. Hogan
Chairman
National Indian Gaming Commission
1441 L Street, NW
Suite 9100
Washington, DC 2005

DEC 14 2007

Re: Amendment to Twenty-Nine Palms Band of Mission Indians Gaming Ordinance - "CRIT" MICS Regulation/Enforcement Modification

Dear Chairman Hogan:

On behalf of the Twenty-Nine Palms Band of Mission Indians and the Twenty-Nine Palms Gaming Commission, and pursuant to IGRA (25 U.S.C. § 2710) and 25 CFR §522.3, I am hereby submitting for your review and approval the enclosed amendment to the Tribe's Gaming Ordinance. The specific proposed amendment is contained within the Tribe's duly-adopted Resolution No. 120507 contained herein.

The purpose and intent of this amendment to the Ordinance is to maintain the "status quo" between the Tribe and NIGC that has existed for 13 years+ regarding the validity of and the Tribe's compliance with, Minimum Internal Control Standards promulgated and enforced by the NIGC and which have governed the Tribe's Class II and Class III gaming operations. Because of the uncertainty of the application of the so-called "CRIT" judicial decision to the Tribe's gaming operations, for both the protection of its assets and protection of the public, the Tribe felt that the adopting the attached clarifying amendment pursuant to its sovereign powers of self-government, has become necessary. Once approved by the NIGC pursuant to its valid and unquestioned authority to approve gaming ordinances under IGRA, the Tribe is confident that its purposes in adopting this amendment will have been satisfied.

Thank you for your attention to this matter and the assistance of NIGC staff in working through the details.

Sincerely,

Gary E. Kovall

xc: Darrell Mike, Chairman
Joe Murillo, Executive Director, Twenty-Nine Palms Gaming Commission

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RESOLUTION OF THE GENERAL COUNCIL

THE TWENTY-NINE PALMS BAND OF MISSION INDIANS

AMENDMENT TO THE GAMING ORDINANCE

RESOLUTION NO. 120507

WHEREAS, the Twenty-Nine Palms Band of Mission Indians ("Tribe") is a federally-recognized Indian tribe invested with powers of sovereign self-government;

WHEREAS, operation of class II and class III games of chance by the Tribe upon its reservation lands is a valid and legal means of promoting tribal economic development, economic self-sufficiency and the general health and welfare of the tribal members;

WHEREAS, that under the principles established by the United States Supreme Court in California v. Cabazon Band of Mission Indians 480 U.S. 202 (1987), Indian tribes have the right to offer and regulate gaming activity on Indian lands;

WHEREAS, the United States Congress, in response to the Cabazon decision, enacted Public Law 100- 497 (25 U.S.C. § 2701 *et seq.*), commonly known as the Indian Gaming Regulatory Act ("IGRA") authorizing certain types of class II and class III gaming activities by federally-recognized Indian tribes on lands within the jurisdiction of the Tribe;

WHEREAS, that the Tribe has entered into a Class III Gaming Compact with the State of California ("Compact") which Compact has been duly authorized by the United States Department of the Interior and which authorizes the Tribe to engage in class III gaming activities pursuant to federal law on its reservation lands in accordance with the provisions of the Compact and IGRA;

WHEREAS, the tribal regulation of gaming activity on its reservation lands is vital to the protection of the lands and the interests of the Tribe and its members;

WHEREAS, the Tribe duly enacted a tribal gaming activity ordinance to enable it to regulate gaming activities on its lands in 1994, and amended in May of 2003 (Resolution No 050203A) which ordinance and amendment were duly approved by the National Indian Gaming Commission ("NIGC") as required by IGRA, and which ordinance established a tribal gaming commission known as the "Twenty-Nine Palms Gaming Commission" ("Commission") and then further modified the membership eligibility requirements for its Commissioners;

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WHEREAS, in light of the October 2006 Colorado Indian Tribe decision ("CRIT" decision) of the United States Circuit Court, District of Columbia, calling into question the validity of Minimum Internal Control Standards ("MICS") promulgated and enforced by the NIGC which have governed the gaming operations of the Tribe since adoption of its Gaming Ordinance, as amended, the Tribe has concluded that, in the best interests of its gaming operations, protecting tribal assets and enhancing and preserving the integrity of the games being offered to the public, continued compliance with the MICS and the authority of the NIGC related to said MICS is necessary and appropriate; and

WHEREAS, the Tribe hereby wishes to confirm its intentions hereunder by adopting a specific amendment to its Gaming Ordinance under the authority of IGRA and tribal law concerning the MICS regulations as set forth below; and

WHEREAS, under its Class III Gaming Compact with the State of California, in particular, Modification No. 2, Section 8.4.1(e) thereof, the Tribe, pursuant to tribal law and the provisions of IGRA [25 U.S.C. § 2710 (d)(1)(A) (i) and (iii)] hereby clarifies that the authority to regulate the Tribe's gaming operations; in particular, adoption and compliance with the MICS, is a matter of the sovereign to sovereign governmental relationship between the Tribe and the federal government (NIGC); and

WHEREAS, the General Council of the Tribe is the duly-authorized governing body of the Tribe and is empowered by the articles of association of the Tribe and tribal law to enact this amendment to its approved tribal gaming activity ordinance, and

WHEREAS, to best promote and assure the continued integrity of the gaming activities upon its reservation lands as required by IGRA and the Compact the Tribe takes the actions described below to amend its Gaming Ordinance regarding the internal control standards governing its gaming operations and related authority of the Tribe and the NIGC;

ACCORDINGLY, the Tribe hereby adopts the following amendment to its tribal gaming ordinance and authorizes the tribal Chairman or his designee to submit such amendment to the National Indian Gaming Commission for review:

"<u>Minimum Internal Control Standards</u>

(A) *<u>Applicable Standards</u>*. The Twenty-Nine Palms Gaming Commission shall comply with 25 CFR Part 542 by formally adopting and making applicable to the tribe's gaming operation(s) internal control standards that:

(A) Provide a level of control that equals or exceeds those set forth in 25 CFR part

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542, as published or as revised by mutual agreement between the National Indian Gaming Commission and the TRwenty-Nine Palms Band of Mission Indians; and

2. Contain standards for currency transaction reporting that comply with 31 CFR Part 103; and

3. Establish internal control standards for Class II and Class III games that are not addressed in the MICS, if any.

B. *Annual CPA Testing of Compliance.* In order to verify that the gaming operation is in compliance with the internal control standards adopted pursuant to paragraph A, an independent certified public accountant (CPA) shall be engaged annually to perform "Agreed-Upon Procedures" in the manner provided for in 25 CFR 542.3(f).

C. Compliance. The tribal gaming regulatory authority and the NIGC shall monitor and enforce compliance with the internal control standards adopted pursuant to paragraph A in the manner provided for in 25 CFR 542.3(g). In addition, the National Indian Gaming Commission shall, for the purpose of enforcing compliance with the internal control standards, have the power to:

1. monitor all Class II and Class III gaming on a continuing basis;

2. inspect and examine all premises on which Class II or Class III gaming is conducted; and

3. demand access to and inspect, examine, photocopy, and audit all papers, books, and records respecting gross revenues of all Class II and Class III gaming or any other matters necessary to ensure and enforce compliance with the MICS.

D. Enforcement. Any failure to adopt internal control standards pursuant to paragraph A, to perform Agreed-Upon Procedures pursuant to paragraph B, to prevent or obstruct the exercise of any of the Commission's powers under paragraph C, or to comply with the internal control standards once adopted is a violation of this ordinance. The Chairman of the National Indian Gaming Commission shall have the authority to remedy violations of this ordinance under 25 U.S.C. 2713 and its implementing regulations, and the Tribe shall have all rights and remedies available thereunder."

CERTIFICATION

I, the undersigned Secretary of the Twenty-Nine Palms Band of Mission Indians General Council

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certify that Resolution No. 120507 was adopted at a duly-noticed and conducted meeting of the General Council on December 5, 2007 at which a quorum was present by a vote of 4 for 0 against and 0 abstaining.

Dineen Mike, Secretary

Exhibit A22

Picayune Rancheria
of the

CHUKCHANSI INDIANS

46575 Road 417 • Coarsegold, CA 93614 • (559) 683-6633 • FAX (559) 683-0599

2008 NOV 21 PM 4:05

CONTROL COMMISSION

Attention: Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

November 19, 2008

Dear Ms. Matteucci:

The Picayune Rancheria of the Chukchansi Indians once again expresses its opposition to the proposed CGCC-8 Minimum Internal Control Standards ("MICS") regulation, in its amended form dated October 1, 2008. Picayune's opposition is based on the central fact that the California Gambling Control Commission ("Commission") lacks the authority to promulgate CGCC-8, inasmuch as the regulation exceeds the Commission's oversight authority set forth in the 1999 Tribal-State Compact (the "1999 Compact").

The 1999 Compact established a government to government relationship between the Chukchansi Indians and the State. According to the preamble the system of regulation of Indian gaming fashioned by Congress in IGRA rests on an allocation of regulatory jurisdiction among three sovereigns: the federal government, the state in which a tribe has land, and the tribe itself. No where in the preamble does it state subdivisions of these sovereigns have the authority to unilaterally re-negotiate the terms set forth in the agreed upon compact. Any changes to the terms set forth in the 1999 Compact must be renegotiated between the two sovereigns, and new or additional regulatory requirements must be agreed to through government to government negotiations. Specifically Section 12.0 of the 1999 Compact establishes specific procedures and authority for any amendments and renegotiations of the terms of the compact.

Section (a) of CGCC-8 describes the purported authority for the regulation. The Commission asserts authority in section 7.1 of the 1999 Compact, and in sections 7.4 through 7.4.4, which "provide the State Gaming Agency the authority to inspect the Gaming Facility, as defined in the Compact, as reasonably necessary to ensure compliance with the Compact." CGCC-8 § (a)(2). The means by which the regulation aims to ensure compliance are: (1) to require Tribal Gaming Agencies to maintain internal control standards that equal or exceed the MICS set forth at 25 C.F.R. Part 542, and (2) to require the Commission to review independent audits of gaming operations' compliance with applicable tribal standards, and allow it to conduct on-site reviews of gaming operations' compliance.

Neither the "benchmark" MICS nor the compliance reviews contemplated by CGCC-8 are authorized by the 1999 Compact. Under Compact section 8.4.1, the Commission may adopt regulations which Tribal Gaming Agencies must comply, "in respect to any matter encompassed by Sections 6.0, 7.0, or 8.0." Contrary to the Commission's assertion, none of these three sections requires Tribal Gaming Agencies to adopt, maintain, or enforce specific MICS such as those set forth at 25 C.F.R. Part 542. Therefore, the maintenance of MICS is not a subject to be regulated by the Commission.

Section (a)(1) of CGCC-8 apparently attempts to address this argument by adding the sentence: "Section 7.1 of the 1999 Compact and comparable sections of new or amended Compacts, requires the TGA to adopt and enforce regulations which ensure that the Gaming Operation 'meets the highest standards of regulation and internal controls.'" The language quoted from the Compact, however, is not a requirement that Tribal Gaming Agencies adopt or enforce any particular internal control standards, as revealed by a simple look at the context:

> It is the responsibility of the Tribal Gaming Agency to conduct on-site gaming regulation and control in order to enforce the terms of this Gaming Compact, IGRA, and the Tribal Gaming Ordinance with respect to Gaming Operation and Facility compliance, and to protect the integrity of the Gaming Activities, the reputation of the Tribe and the Gaming Operation for honesty and fairness, and the confidence of patrons that tribal government gaming in California meets the highest standards of regulation and internal controls. To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein.

This section mandates that the Tribal Gaming Agency regulate gaming in order to protect, among other things, patrons' confidence in the standard of internal controls for gaming throughout the state. It is emphatically not a requirement that Tribal Gaming Agencies establish a particular set of internal controls or be regulated by the State gaming agency. Indeed, a Tribal Gaming Agency fully meets its responsibilities under Section 7.1 by adopting and enforcing the rules described in the Compact, none of which require implementation of MICS equivalent to those found in the federal regulations. Because under Compact section 8.4.1, the state Commission may only regulate matters encompassed by sections 6.0, 7.0, and 8.0 of the Compact, and Minimum Internal Control Standards are not such a matter, the proposed regulation exceeds the Commission's authority under the Compact.

Moreover, nothing in the Compact confers jurisdiction on the State to enforce the Tribal Gaming Agency rules pertaining to the gaming operation. That responsibility is accorded exclusively to the Tribal Gaming Agencies. See

Compact §§ 7.1 and 8.1. Sections 7.4 and 7.4.4 grant the state "authority to inspect" as necessary "to ensure compliance" with the Compact – i.e., to ensure that the Tribal Gaming Authorities have enacted the required rules and enforcement mechanisms – but plainly do not give the state authority to separately enforce gaming operations' compliance with the Tribal Gaming Agencies' rules or dictate the content of those rules outside the specific provisions of the Compact.

The proposed regulation circumvents the government to government negotiation process mandated in IGRA and would allow the state to unilaterally regulate tribes in an area that was not agreed to in compact negotiations. There is regulation in place that protects class III Indian gaming at the tribal, federal and state level. The State has not effectively regulated the areas it has current authority over, yet it attempts to take on responsibility outside that authorized by the Compact without a government-to-government negotiation. Also, no enforcement mechanism exists to prevent abuse of this regulatory power by the State gaming agency as long as the outstanding procedural objections by the State continue to negate the dispute resolution process set forth in Section 9.0 of the Compact. The proposed regulation is unduly burdensome and discriminatory as it requires a higher standard for tribal gaming facilities that already meet or exceed standards set by the State while the State does not currently have MICS for other State sanctioned gaming. At this time there does not appear to be a need for CGCC-8, nor is there authority within the Tribal State Compact for such regulation.

Therefore, the Picayune Rancheria of the Chukchansi Indians again opposes adoption of CGCC- 8, as the provisions of this regulation, regardless of the version, violate the 1999 Compact between the Chukchansi Indians and the State. Any provisions, interpretations, establishment of specific procedures and granting of authority belong in compact negotiations between the State of California and the Tribe, as pursued in 2004, 2007, and 2008 with tribes amending existing compacts or signing new compacts.

For the foregoing reasons, the Picayune Rancheria of the Chukchansi Indians opposes the proposed CGCC-8 regulations.

Sincerely,

Morris Reid
Chairman

Joe Alberta
Secretary

Exhibit A23

FORMAN & ASSOCIATES
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FACSIMILE COVER SHEET

TO: Evelyn Matteucci, Chief Counsel

FAX: 916-263-0452

FROM: George Forman

DATE: November 18, 2008

RE: Robinson Rancheria of Pomo Indians' Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

TOTAL NUMBER OF PAGES (including cover sheet): 6

ORIGINAL WILL **NOT** FOLLOW

COMMENTS

Please see attached.

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November 18, 2008

VIA FACSIMILE (916-263-0452) ONLY

Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Robinson Rancheria of Pomo Indians' Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

Dear Ms. Matteucci:

Forman & Associates, Attorneys at Law, is legal counsel to the Robinson Rancheria of Pomo Indians ("Tribe"). Our client has requested that we submit the Tribe's objections to CGCC-8 on the Tribe's behalf.

In accordance with Compact Section 8.4.1(c), and as requested by the CGCC, the Tribe hereby submits its comments regarding the Commission's re-adoption of CGCC-8 over the Association's disapproval of the proposed regulation. As explained below, the Tribe hereby objects to the purported re-adoption as contrary to the plain language of Section 8.4.1(c) and (d), which authorizes the Commission to adopt a regulation without obtaining the Association's prior approval only in exigent circumstances as provided in subdivision (d). Because the Commission has not found that exigent circumstances exist to justify adoption of the proposed regulation over the Association's objections, because no such circumstances in fact exist, and because the proposed regulation is unnecessary and unduly burdensome, the Tribe objects to the proposed regulation as an action that is beyond the Commission's limited authority under the Tribe's Compact.

The Tribe agrees with the objections to CGCC-8 set forth in the Association's February 13, 2008, Task Force Report (except as the proposed regulation has been revised to

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accede to those objections), and will not reiterate them here. Instead, the Tribe will focus its comments on the proper interpretation of Compact §8.4.1. Section 8.4.1(a) provides:

> (a) *Except as provided in subdivision (d)*, no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation. (emphasis added).

The language of the Compact, to which the State the Tribe both agreed, could not be clearer: the Commission can impose a regulation on a tribe if – and only if – subdivision (a)'s two prerequisites are met – *i.e.* (1) approval by the Association, *and* (2) review and comment by the Tribe. Subdivision (a) recognizes a single situation – exigent circumstances (set out in sub. (d)) – in which the Commission can dispense with these prerequisites. But in the absence of exigent circumstances – and the Commission has not even attempted to claim that they are present here – the Commission must obtain the Association's approval of a regulation. This interpretation of subd. (a) gives effect to the clear and explicit meaning of its terms; accordingly, it governs. *See Bank of the West v. Sup. Ct.* (1992) 2 Cal.4th 1254, 1265; Civ. Code §1364 ("The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.").

The Commission contends that it may circumvent Association approval by the simple expedient of responding to the Association's objections before re-adopting the materially identical regulation. In support of its interpretation, the Commission relies on §8.4.1(b), which states:

> (b) Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

The Commission argues that subd. (b) must "constitute[] a clear exception to the general requirement that the Association approve a regulation before it may be effective," because any contrary reading would render subd. (b) "mere surplusage." CGCC's *Detailed Response*, p.1,

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n.2. The Commission's position rests on a false premises and, in any case, raises more problems than it purports to solve.

Despite the Commission's claim to the contrary, the Tribe's reading of subd. (a) does not render subd.(b) mere surplusage. It is true that both subd. (a) and (b) mention the prerequisites of promulgating a regulation – Association approval and submission for tribal comments – but subd. (b) clarifies and elaborates on subd. (a)'s requirements. The first sentence of subd. (b) makes clear that Association approval is satisfied when the Association itself proposes a regulation – something that is at most implied by subd. (a). That sentence also authorizes the Commission to submit a regulation to the tribes only after obtaining Association approval; subd. (a) is silent on this point. The second sentence of subd. (b) addresses the Commission's particular obligations when the Association disapproves a proposed regulation – a topic that subd. (a) does not address. In sum, subd. (a) and subd. (b) both can be given effect without making either provision redundant or inconsistent.

In addition, the Commission urges a reading of subd. (b) that violates at least two canons of interpretation. Although subd. (a) expressly subjects Association approval of a regulation to one – and only one – exception (subd. (d)), the Commission interprets sub. (b) to constitute a second exception. To accept the Commission's position, one must ignore the crystalline language of subd. (a), and assume that the drafters were smart enough to use exception language with respect to subd. (d) but careless enough to relegate another exception to a different subdivision without labeling it as an exception. Such a view is untenable. *See White v. Western Title Ins. Co.* (1985) 40 Cal.3d 870, 881 n.4 ("Under the familiar maxim of *expressio unius est exclusio alterius* it is well settled that, when a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded. This canon, based on common patterns of usage and drafting, is equally applicable to the construction of contracts.").

Moreover, if subd. (b) had been intended to authorize the re-adoption of any regulation over the Association's disapproval, it is hard to see what purpose would be served by subd. (a)'s language requiring pre-approval by the Association. As the Commission itself recognizes, an interpretation that renders another section mere surplusage must be avoided if at all possible. *Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 560 (interpretation that renders provisions "mere surplusage . . . violate[s] the principle that, where possible, the entire contract should be given effect. (Civ. Code, §1641.)"). As shown above, it is the Tribe's interpretation, not the Commission's, that gives effect to both subd. (a) and subd. (b).

Thus, if for no other reason than that what the Commission proposes to do is not within the Commission's authority under the Tribe's Compact, CGCC-8 should not be adopted in its present form.

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Contrary to what the Commission has suggested, declining to adopt CGCC-8 at this time would not leave the State without protection against the possibility that some tribe, somewhere, might abdicate its regulatory responsibility to maintain internal controls consistent with industry standards and practice. This would be true even if virtually every California tribe had not already adopted MICS at least equal to the NIGC's MICS, which were based in part on tribally-developed MICS and thus set the industry standard or practice.

Compact Section 8.1 and its subsections set forth in great detail the minimum regulatory standards that each Tribal Gaming Agency must promulgate and enforce. The State could have insisted that the 1999 Compact and subsequent amended compacts include specific MICS or specific authority for the SGA to impose MICS; it didn't, and it must abide by the agreements that it negotiated. Rather, §8.1 implicitly recognizes that tribes may be differently situated, requiring MICS reasonably tailored to specific tribal needs, with the adequacy of those MICS determined on a tribe-specific basis. The Commission's imposition of a one-size-fits-all regime effectively would supplant the primacy of the tribal regulatory role acknowledged in the Compact.

Section 7.4 (and subdivisions) of the Tribe's Compact gives the State Gaming Agency unrestricted access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact. This section, when combined with the standards that §8.1 requires the Tribal Gaming Agency to promulgate and enforce, gives the State Gaming Agency all the tools necessary to ensure that the Tribal Gaming Agency is fulfilling its regulatory responsibilities without overriding the exercise of those responsibilities through the adoption of CGCC-8.

If the foregoing were not enough to warrant the rejection of CGCC-8, the interactions that Tribes have had with Commission personnel give rise to a serious concern that CGCC-8 could become the vehicle for pretextual or other needless and costly burdens on tribal gaming regulators and gaming operations. As one recent example, earlier this year the Commission issued public statements about tribal use of allegedly "obsolete" software that raised questions about the honesty and integrity of tribal gaming. In fact, as was explained by GLI, the software in question was "obsolete" only in the sense that the manufacturer no longer supported the product, not because the software no longer was fully functional, and thus continued use of the software was entirely appropriate. The charitable explanation for the Commission's public position – which never has been publicly retracted – is that the Commission simply didn't understand the difference between "obsolete" and recalled software.

In an area as technical as MICS, there is a very real potential for similar misunderstandings based on a lack of knowledge or experience on the part of Commission staff. This could lead to disputes that would be costly and time-consuming to resolve. That is why a

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working group of tribal attorneys proposed a procedure for lower-level dispute resolution before the State could invoke the process set forth in §9 of the Compact – a proposal that the Commission rejected.

In short, the Tribe regards CGCC-8 to be an unnecessary solution to a non-existent problem. For that reason, and because adoption of CGCC-8 as proposed exceeds the Commission's authority under the Tribe's Compact, the Tribe urges the Commission to withdraw CGCC-8.

Very truly yours,

FORMAN & ASSOCIATES

George Forman

Exhibit A24

Pauma Band of Mission Indians
ADMINISTRATIVE OFFICE

Facsimile Cover Sheet

Date:	11/20/08
Total Pages (including cover):	8
Company:	California Gambling Control Commission
Attention:	Evelyn Matteucci, Chief Counsel
Fax #:	(916) 263-0452
From:	Chairman Chris Devers

Subject:

P.O. Box 369, Pauma Valley, CA 92061 • (760) 742-1289 • Fax (760) 742-3422

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Pauma Band of Mission Indians

P.O. Box 369 • Pauma Valley, CA 92061 • (760) 742-1289 • Fax (760) 742-3422

Established 1893

November 20, 2008

BY FAX (916-263-0452)

Attn: Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks, Suite 100
Sacramento, CA 95833

RE: Comments Concerning CGCC's Re-Adoption of CGCC-8

Dear Ms. Matteucci:

This Pauma Band of Mission Indians ("Tribe") hereby submits its comments regarding the California Gambling Control Commission's ("CGCC") re-adoption of CGCC-8 on October 14, 2008.

As an initial matter, the Tribe objects to the comment deadline set by the CGCC. The Tribal-State Compact provides for a 30-day comment period, which commences "after submission of the proposed regulation to the Tribe." (Sec. 8.4.1 (c).) The CGCC has apparently interpreted this deadline as running from the date it sent the regulation to the Tribe. A more appropriate and reasonable interpretation of section 8.4.1(c) is that when a notice and regulation is served by mail, the 30-day comment period should be deemed to start five days after the mailing (*see, e.g.*, Code of Civil Procedure section 1013(a).) The Tribe therefore asks that the Commission accept as timely submitted any tribal comments received by the close of business on November 24, 2008.

As another preliminary matter, the Tribe objects to the CGCC's failure to include the joint comments submitted by the Tribe and the Pauma Gaming Commission in its "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)" or the exhibits attached thereto. These comments were submitted to the CGCC by letter dated February 19, 2008, and the Tribe requested that the letter be made part of the record for the February 21, 2008, meeting at which the CGCC was going to vote on CGCC-8. While the CGCC initially refused to make our comment letter part of the record, it reversed itself and sent us a letter dated September 24, 2008, in which it stated that it would make our comment letter "part of the overall CGCC-8 record" and assured us "it will be responded to along with all the other CGCC-8 letters."

The Pauma Gaming Commission brought this omission to the CGCC's attention in a letter dated October 13, 2008, which was submitted to the CGCC at its meeting on

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With respect to the CGCC's re-adoption of CGCC-8, the Pauma Band of Mission Indians adopts and incorporates by reference herein the comments set forth in the attached Pauma Gaming Commission's letter of October 13, 2008. Without limiting the generality of the foregoing, the Tribe emphasizes that the CGCC's re-adoption of CGCC-8 is invalid and CGCC-8 has no legal effect with respect to the Tribe's gaming operation because it has not been approved by the Association, as expressly and clearly required by section 8.4.1(a) of the Tribal-State Compact. The only exception to prior approval of the Association is the "exigent circumstances" exception contained in section 8.4.1(a). In addition, since the CGCC amended CGCC-8 after it was reviewed by the Association, the amended version should have been re-submitted to the Association for approval and not sent out to the Tribe for comment.

The Tribe disagrees with the CGCC's position that section 8.4.1(b) provides an exception to the general rule of section 8.4.1(a) requiring prior Association approval. Section 8.4.1(b) cannot be read to negate or render meaningless the clear requirement for Association approval set forth in section 8.4.1(a). Moreover, an interpretation of section 8.4.1 that would permit the CGCC to unilaterally impose statewide regulations in the face of disapproval by the Association flies in the face of well-established principles of tribal sovereignty and, in particular, the rule that civil-regulatory laws do not apply to tribes in California. These principles formed the backdrop for the negotiation of the Tribal-State Compacts and it defies reason that the parties to the compacts would have created the Association specifically for the purpose of approving proposed state-wide gaming regulations but then permitted the CGCC to effectively override the Association by adopting a regulation that was not supported by any other delegate to the Association, including the other arm of the State Gaming Agency.

In summary, the Pauma Band of Mission Indians asks the CGCC not to adopt CGCC-8 as a final regulation and to either abandon the regulation or submit the amended version of CGCC-8 to the Association for consideration.

Respectfully,

Chris Devers, Chairman
Pauma Band of Mission Indians

c.c. Dean Shelton, Chairperson, CGCC
Dee Cline, President, Pauma Gaming Commission

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November 20, 2008

BY FAX (916-263-0452)

Attn: Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks, Suite 100
Sacramento, CA 95833

RE: Comments Concerning CGCC's Re-Adoption of CGCC-8

Dear Ms. Matteucci:

This Pauma Band of Mission Indians ("Tribe") hereby submits its comments regarding the California Gambling Control Commission's ("CGCC") re-adoption of CGCC-8 on October 14, 2008.

As an initial matter, the Tribe objects to the comment deadline set by the CGCC. The Tribal-State Compact provides for a 30-day comment period, which commences "after submission of the proposed regulation to the Tribe." (Sec. 8.4.1 (c).) The CGCC has apparently interpreted this deadline as running from the date it sent the regulation to the Tribe. A more appropriate and reasonable interpretation of section 8.4.1(c) is that when a notice and regulation is served by mail, the 30-day comment period should be deemed to start five days after the mailing (*see, e.g.*, Code of Civil Procedure section 1013(a).) The Tribe therefore asks that the Commission accept as timely submitted any tribal comments received by the close of business on November 24, 2008.

As another preliminary matter, the Tribe objects to the CGCC's failure to include the joint comments submitted by the Tribe and the Pauma Gaming Commission in its "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)" or the exhibits attached thereto. These comments were submitted to the CGCC by letter dated February 19, 2008, and the Tribe requested that the letter be made part of the record for the February 21, 2008, meeting at which the CGCC was going to vote on CGCC-8. While the CGCC initially refused to make our comment letter part of the record, it reversed itself and sent us a letter dated September 24, 2008, in which it stated that it would make our comment letter "part of the overall CGCC-8 record" and assured us "it will be responded to along with all the other CGCC-8 letters."

The Pauma Gaming Commission brought this omission to the CGCC's attention in a letter dated October 13, 2008, which was submitted to the CGCC at its meeting on

207

With respect to the CGCC's re-adoption of CGCC-8, the Pauma Band of Mission Indians adopts and incorporates by reference herein the comments set forth in the attached Pauma Gaming Commission's letter of October 13, 2008. Without limiting the generality of the foregoing, the Tribe emphasizes that the CGCC's re-adoption of CGCC-8 is invalid and CGCC-8 has no legal effect with respect to the Tribe's gaming operation because it has not been approved by the Association, as expressly and clearly required by section 8.4.1(a) of the Tribal-State Compact. The only exception to prior approval of the Association is the "exigent circumstances" exception contained in section 8.4.1(a). In addition, since the CGCC amended CGCC-8 after it was reviewed by the Association, the amended version should have been re-submitted to the Association for approval and not sent out to the Tribe for comment.

The Tribe disagrees with the CGCC's position that section 8.4.1(b) provides an exception to the general rule of section 8.4.1(a) requiring prior Association approval. Section 8.4.1(b) cannot be read to negate or render meaningless the clear requirement for Association approval set forth in section 8.4.1(a). Moreover, an interpretation of section 8.4.1 that would permit the CGCC to unilaterally impose statewide regulations in the face of disapproval by the Association flies in the face of well-established principles of tribal sovereignty and, in particular, the rule that civil-regulatory laws do not apply to tribes in California. These principles formed the backdrop for the negotiation of the Tribal-State Compacts and it defies reason that the parties to the compacts would have created the Association specifically for the purpose of approving proposed state-wide gaming regulations but then permitted the CGCC to effectively override the Association by adopting a regulation that was not supported by any other delegate to the Association, including the other arm of the State Gaming Agency.

In summary, the Pauma Band of Mission Indians asks the CGCC not to adopt CGCC-8 as a final regulation and to either abandon the regulation or submit the amended version of CGCC-8 to the Association for consideration.

Respectfully,

Chris Devers, Chairman
Pauma Band of Mission Indians

c.c. Dean Shelton, Chairperson, CGCC
Dee Cline, President, Pauma Gaming Commission

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PAUMA GAMING COMMISSION

October 13, 2008

BY FAX (916-263-0452)

Dean Shelton, Chairman
California Gambling Control Commission
2399 Gateway Oaks, Suite 100
Sacramento, CA 95833

RE: CGCC Meeting on October 14, 2008

Dear Chairman Shelton:

The Pauma Gaming Commission of the Pauma Band of Mission Indians submits this letter for the CGCC's consideration at its meeting on October 14, 2008, and requests that this letter be made part of the record for said meeting.

By letter dated February 19, 2008, the Pauma Band of Mission Indians and the Pauma Gaming Commission submitted its comments on CGCC-8 to the CGCC and asked that the letter be made part of the record for the February 21, 2008, meeting at which the CGCC was going to vote on CGCC-8. While the CGCC initially refused to make our comment letter part of the record, it reversed itself and sent us a letter dated September 24, 2008, in which it stated that it would make our comment letter "part of the overall CGCC-8 record" and assured us "it will be responded to along with all the other CGCC-8 letters."

However, the CGCC did not address our comment letter in its "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)" or include our letter with the tribal comment letters appended to the Detailed Response. We are therefore writing to ensure that our original comment letter dated February 19, 2008, is included among the documents considered by the CGCC in formulating its decision. In addition, we ask that the CGCC trail this matter to a later date in order to ensure that our comment letter and all the other tribal comment letters concerning CGCC-8 received by the CGCC-8 prior to September 2008, which were not included in the Detailed Response or attached exhibits.

In addition, we would like to add the following additional comments: First, we have reviewed the proposed amendments to CGCC-8 dated October 1, 2008, and we do not believe the amendments adequately address the concerns we set forth in our letter of

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Ph: (760) 742-1020 • Fax: (760) 742-3387

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February 19, 2008, or the concerns set forth in the Association's Regulatory Standards Taskforce Final Report and Statement of Need dated February 13, 2008, which we incorporated by reference in our comment letter. We therefore stand by our original comments and reiterate our request that the CGCC not re-adopt the amended regulation CGCC-8.

Secondly, the CGCC does not have the authority to unilaterally impose CGCC-8 after it has been rejected by the Association. Section 8.4.1, subdivision (a) of our Tribal-State Compact makes it clear that "no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* and the Tribe has an opportunity to review and comment on the proposed regulation" (emphasis added). The only exception to the requirement for Association approval is subdivision (d), which permits the adoption of regulations without Association approval in exigent circumstances. Since CGCC-8 was disapproved by the Association on September 4, 2008, it is our position that CGCC-8, even if re-adopted by the CGCC, will be ineffective as to the Pauma Gaming operation.

We understand that the CGCC may be relying on subdivision (b) of section 8.4.1, which contemplates that the CGCC may re-adopt a regulation that is disapproved by the Association, but the remainder of that subdivision and the section read as a whole makes it clear that subdivision (b) contemplates the CGCC being able to do so only when it is able to amend the regulation in a manner that overcomes the objections of the Association. As stated above, the proposed amendments to CGCC-8 fail to overcome the objections expressed at the Association meeting on September 4, 2008. The only valid option for the CGCC is to submit the amended CGCC-8 to the Association and seek the Association's approval of the amended regulation.

In summary, the Pauma Gaming Commission of the Pauma Band of Mission Indians asks that the CGCC not re-adopt CGCC-8 and, if it does so, that it submit the amended regulation to the Association in conformity with subdivision (a) of section 8.4.1.

Respectfully,

Lenora "Dee" Cline, President
Pauma Gaming Commission

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c.c. Alexandra Vuksich, Commissioner, CGCC
Stephanie Shimazu, Commissioner, CGCC
Sheryl Schmidt, Commissioner, CGCC
Evelyn M. Matteuci, Chief Counsel, CGCC

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Exhibit A25

THE VENETIAN Resort·Hotel·Casino

THE PALAZZO Resort·Hotel·Casino

2008 NOV 20 PM 4:52

CONTROL CLERK'S OFFICE

BUSINESS SERVICES DIVISION
VENETIAN & PALAZZO BUSINESS CENTER
OFFICE: (702) 414-4488
FAX 1: (702) 414-1100
FAX 2: (702) 414-4904

FAX COVER SHEET

TO: Dean Shelton
FAX: 916 263 0499
PHONE: _____
PAGES: 3 (INCLUDING COVER)

FROM: Elizabeth Kipp
FAX: Chairwoman-
PHONE: Big Sandy Rancheria
DATE: ~~11~~ 11-20-08
559-917-7124

☒ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

Venetian Resort Hotel Casino 3355 LAS VEGAS BLVD SOUTH • LAS VEGAS, NV 89109
Palazzo Resort Hotel Casino 3325 LAS VEGAS BLVD SOUTH • LAS VEGAS, NV 89109

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November 20, 2008

Mr. Dean Shelton, Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, California 95833-4231

RE: COMMENTS TO CGCC 8

Dear Chairman Shelton:

The following are comments in regard to CGCC 8 as identified by the Big Sandy Rancheria Tribal Government:

1. That said CGCC 8 as proposed, is clearly an unnecessary duplication of regulation. Tribal Gaming is regulated at the Federal level, in regard to the MICS, by means of the NIGC approving Tribe's Gaming Ordinances that may include the requirement of a internal control standards, the State level by Section 8.1 which states, "...In order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum rules and regulations or specifications governing the following subjects, ...", and the Tribal level by means of the Tribal Gaming Ordinance.

2. That the Compact at Section 7.1 provides that the Tribal Gaming Agency is "...to conduct on-site gaming regulation and control in order to enforce the terms of the Gaming Compact, IGRA, and the Tribal Gaming Ordinance...To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein." Clearly, CGCC 8 is attempting to place the CGCC in the place of the day to day regulator. The Tribe is of the opinion that said regulation is premature and a regulation should be proposed that identifies and outlines how the CGCC intends to conduct its Inspections.

3. That IGRA states at Sec. 2701 Findings

   The Congress finds that -

   "...(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."

   These findings should be read within the context of all Compact terms, which would indicate that CGCC 8 is attempting to diminish Compact Section 8.1 etc. and intrude into the day to day regulation of Indian Gaming

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4. That a survey of Tribal Regulatory Agencies was performed after the CRIT decision was issued and approximately 96% of the Tribes all had instituted Minimum and Tribal internal control standards for their own gaming operation, therefore there is no need for CGCC 8.

Thank you for your time and attention to the above comments, the Big Sandy Rancheria would recommend that CGCC 8 not be adopted by the California Gambling Control Commission.

Gaming Commission Chairman.

For Elizabeth Kipp, Chairperson, Big Sandy Rancheria

Cc: Big Sandy Rancheria Tribal Council
Big Sandy Rancheria Tribal Gaming Commission
General Counsel, California Gambling Control Commission
File

HARD COPY TO FOLLOW

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Exhibit A26

THE VENETIAN Resort·Hotel·Casino

THE PALAZZO RESORT·HOTEL·CASINO

2008 NOV 20 PM 3:37

CONTROL SC...

BUSINESS SERVICES DIVISION
VENETIAN & PALAZZO BUSINESS CENTER
OFFICE: (702) 414-4488
FAX 1: (702) 414-1100
FAX 2: (702) 414-4904

FAX COVER SHEET

TO: Dean Shelton
FAX: 916) 263-0499
PHONE: 916) 263-0700
PAGES: _____ (INCLUDING COVER)

FROM: Larry Sisco
FAX: 559) 924-6571
PHONE: 559) 924-6948
DATE: 11/20/08

☑ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

Comments CCCC8

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Palazzo Resort Hotel Casino 3325 LAS VEGAS BLVD SOUTH • LAS VEGAS, NV 89109

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November 20, 2008

Mr. Dean Shelton, Chairman
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, California 95833-4231

RE: COMMENTS TO CGCC 8

Dear Chairman Shelton:

The following are comments in regard to CGCC 8 as previously identified by the Santa Rosa Tachi Tribal Government:

1. That said CGCC 8 as proposed, is clearly an unnecessary duplication of regulation. Tribal Gaming is regulated at the Federal level, in regard to the MICS, by means of the NIGC approving Tribe's Gaming Ordinances that may include the requirement of a internal control standards, the State level by Section 8.1 which states, "...In order to meet the goals set forth in this Gaming Compact and required of the Tribe by law, the Tribal Gaming Agency shall be vested with the authority to promulgate, and shall promulgate, at a minimum rules and regulations or specifications governing the following subjects, ...", and the Tribal level by means of the Tribal Gaming Ordinance.

2. That the Compact at Section 7.1 provides that the Tribal Gaming Agency is "...to conduct on-site gaming regulation and control in order to enforce the terms of the Gaming Compact, IGRA, and the Tribal Gaming Ordince...To meet those responsibilities, the Tribal Gaming Agency shall adopt and enforce regulations, procedures, and practices as set forth herein." Clearly, CGCC 8 is attempting to place the CGCC in the place of the day to day regulator. The Tribe is of the opinion that said regulation is premature and a regulation should be proposed that identifies and outlines how the CGCC intends to conduct its Inspections.
3. That IGRA states Sec. 2701 Findings

   The Congress finds that -

   "...(5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."

   These findings should be read within the context of all Compact terms, which would indicate that CGCC 8 is attempting to diminish Compact Section 8.1 etc. and intrude into the day to day regulation of Indian Gaming

216

4. That a survey of Tribal Regulatory Agencies was performed after the CRIT decision was Issued and approximately 96% of the Tribes all had instituted Minimum and Tribal internal control standards for their own gaming operation, therefore there is no need for CGCC 8.

Thank you for your time and attention to the above comments, the Santa Rosa Ta chi Yokut Tribe would recommend that CGCC 8 not be adopted by the California Gambling Control Commission.

LARRY SISCO, CHAIRMAN
SANTA ROSA RANCHERIAGAMING COMMISSION

FABIAN BARRIOS, COMMISSIONER
SANTA ROSA RANCHERIA GAMING COMMISSION

Cc: Santa Rosa Rancheria Tribal Council
General Counsel, California Gambling Control Commission
File

HARD COPY TO FOLLOW

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Exhibit A27

Rincon Band of Luiseño Indians

PO Box 68 Valley Center, CA 92082 ♦ (760) 749-1051 ♦ Fax: (760) 749-8901

November 19, 2008

2008 NOV 24 AM 11:50

California Gambling Control Commission
2399 Gateway Oaks Drive #100
Sacramento, California 95833

Re: Rincon Band of Luiseño Indians Opposition to CGCC-8

Members of the California Gaming Control Commission:

The Rincon Band of Luiseño Indians ("Band") opposes the CGCC's efforts to adopt CGCC-8 in the strongest of terms. The Band encourages the CGCC to withdraw this proposed regulation and instead work cooperatively with tribal Compact signatories to find a solution to the CGCC's general concerns that is within the metes and bounds of the Compact. Alternatively, if the CGCC's general concerns are not addressed within the Compact, we encourage the CGCC to request that the Governor's office initiate government to government negotiations with the Band.

The Band opposes CGCC-8 for the following reasons:

1. CGCC-8 Must be the Subject of Government to Government Negotiations and a Compact Amendment.

Pursuant to the Compact between the State of California and the Rincon Band, the Tribal Gaming Agency ("TGA") is the primary regulator of all aspects of gaming, gaming operation and management of the Rincon Band's gaming operation. See Compact §§ 7.1, 7.2, 8.1 *see also* 25 U.S.C. 2701 et seq. The TGA (also "Rincon Gaming Commission") is solely vested with the authority and responsibility for promulgation and enforcement of rules and regulations regarding Minimum Internal Control Standards ("MICS"). The Rincon Gaming Commission has adopted MICS and enforces those standards. There is no language within the Compact, or elsewhere in federal law, which delegates promulgation and enforcement authority of MICS to the State Gaming Agency. Furthermore, the Compact does not vest the CGCC with the authority to unilaterally adopt and enforce rules pursuant to section 8.4 of the Compact over the objection of the Association.

The CGCC response to the Association's previous comments sets forth the following statement of contract construction: "Any other interpretation would render subsection (b) mere surplusage, and such a construction must be avoided. (*Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495,503 [language in a contract must be interpreted as a whole and constructions that render contractual provisions surplusage are disfavored]). Application of that standard to CGCC-8's impact on Compact §§ 7.1, 7.2 and 8.1 reveals the error in the CGCC's

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action. The CGCC cannot adopt a regulation that renders existing Compact provisions void or a nullity.

The auditing and compliance review provisions of CGCC-8 provide for significant, unnecessary and unwarranted intrusion by the CGCC. Such new requirements are well beyond the scope of the Compact and would constitute a de facto amendment to the Compact. The authority to audit and conduct compliance reviews based upon standards not found in the text of the Compact is one best discussed in the Compact amendment context.

Should the CGCC wish to assume a regulatory role that is different than that described within the Compact, the appropriate venue for such a change is government to government negotiations and the Compact amendment process.

2. There is no Void in Regulation. There is no Need for CGCC-8.

The substance of CGCC-8 is unnecessary as there is no void in regulation. The Band's gaming commission regulates internal control standards, auditing, and variances to internal control standards. Any effort by the CGCC to implement CGCC-8 is unnecessary and duplicative, in addition to being a violation of the Compact.

The Compact clearly provides that each Tribal Gaming Agency is vested with the authority to promulgate and enforce regulations regarding on-site gaming regulation. The terms of the Compact were not altered by the *CRIT* decision *Colorado River Indian Tribes v. National Indian Gaming Commission,* 466 F.3d 134 (D.C. Cir, 2006). The CGCC's previous response to Association comments improperly asserts that the *CRIT* decision "effectively eliminated the federal government's authority and jurisdiction to regulate Class III gaming in California, at least with regard to the Class III MICS." That is simply not true. Rather, the *CRIT* decision confirmed that NIGC never possessed such authority. The NIGC had no such authority in 1999 when the Compact was consummated. Hence, the limited authority agreed upon in the Proposition 1A compacts was done so with knowledge of the NIGC's limitations. CGCC is encouraged to discuss the matter with Mr. Manny Maderos, one of the State's lead negotiators. He was fully aware that NIGC's assertion of authority was always on the shakiest of legal grounds. If the State wanted the authority it now seeks, it should have done so in the context of the Compact negotiated in 1999.

Tribal Gaming Agencies, including the Rincon Gaming Commission continue to regulate Indian gaming. As further evidence, the regulations of the Rincon Gaming Commission include MICS which are no less rigorous that those found at 25 CFR § 542 et seq. Additionally, and as required by Section 8.1.8 of the Compact, the Rincon Gaming Commission ensures that an independent CPA conducts an audit of the Gaming Operation no less than annually.

As there is no void in regulation, there is no need for CGCC-8.

3. The State Has Failed to Demonstrate that the Existing Compact Provisions Are Inadequate.

Repeatedly throughout the last eighteen months, the CGCC Chairman has asserted that there are Tribes out there operating without MICS or not enforcing MICS. He repeats this statement as his motivation for moving forward with CGCC-8. Yet, he has failed to document or identify such a Tribe. Even if the allegation is true, that Tribe would then be in violation of Compact §§ 7.1, 7.2 and/or 8.1. The State has the access needed to learn whether a violation exists and has enforcement authority under the Compact to cause corrective measures to be taken. The unsubstantiated motive for proceeding does not justify imposition of CGCC-8 on all Tribes. Rather, it justifies taking action under the existing Compact.

4. The Compact does not Provide the CGCC with the Authority to Unilaterally Amend the Compact.

The adoption and enforcement of CGCC-8 is in excess of the CGCC's authority as the Compact does not provide the CGCC with plenary power to modify the terms of the Compact at will. There is no provision within the Compact which states that the State Gaming Agency may promulgate and enforce the terms of CGCC-8 without Association approval. While the Compact provides the State with access to a Tribe's Gaming Facility and limited inspection rights of "papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance" with the Compact, there is no provision within the Compact which authorizes the State Gaming Agency to unilaterally alter the terms of the Compact and enact and enforce regulations regarding MICS and auditing. See Compact §§ 7.0– 7.4.4.

The Compact specifies a very limited role to the State Gaming Agency when considering regulations. That limited and very specific role is to submit proposed regulations to the Association for approval. Pursuant to Section 8.4.1(a):

> **Except as provided in subdivision (d) [Exigent Circumstances], no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.**

Again, the express terms of the Compact provide that, except in exigent circumstances, a State Gaming Agency regulation **cannot** be effective unless it is both (1) approved by the Association and (2) the Tribe has an opportunity to review and comment on the proposed regulation. These are the clear and plain terms of Section 8.4.1(a).

Any argument that the CGCC's reading of sections 8.4.1(b) or 8.4.1(c) can serve to negate the clear terms of 8.4.1(a) and provide a process whereby the CGCC can unilaterally enact and enforce a regulation would result in a completely unreasonable reading of the Compact. Under the CGCC's reading of 8.4.1, the language requiring approval by the Association would have no effect. The plain and specific terms of 8.4.1(a) cannot be negated merely upon unilateral demand by the CGCC. As such a reading is unreasonable and would result in absurd results, it should be clear to the Commission that the Compact does not authorize the State Gaming Agency to unilaterally adopt regulations over the objection of the Association.

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The Compact is clear in Section 8.4.1. A State Gaming Agency regulation which is intended to apply to a Tribe must be approved by the Association prior to such regulation becoming effective. If the rule is rejected by the Association, then the State Gaming Agency may submit the proposed regulation to Indian Tribes for review and comment. These comments may then be useful to the State Gaming Agency when revising a proposed State Gaming Agency regulation for presentation to the Association for review and possible approval. Accordingly, sections 8.4.1(b) and (c) are not "mere surplusage" as they serve a clear purpose. The clear terms of Section 8.4.1 of the Compact provide that this is a collaborative process which is ultimately subject to vote by the Association. Even in the instance of an "exigent circumstances" regulation promulgated pursuant to 8.4.1(d), while the regulation becomes effective immediately, it is still subject to a subsequent vote by the Association and shall "cease to be effective" immediately if disapproved by the Association.

The proposed CGCC-8 circumvents the Compact amendment provisions of the existing Compact. It is a rewrite of sections 7 and 8, which designate the Tribal Gaming Agency as the entity establishing the minimum internal controls and enforcement of those controls. The proposal supplants the TGA with the CGCC and as such is subject to the Compact amendment process.

Government to Government Discussions are Appropriate in this Instance.

The proper forum for State Gaming Agency authority over the substance of CGCC-8 is the Compact amendment process. Any effort other than a government to government negotiation for amendment of the Compacts is void ab initio.

The Band incorporates by reference, previous comments and testimony submitted by the Band, and the formal response of the Association. The Band reserves the right to advance additional arguments against CGCC-8 at appropriate times and in additional forums as this process proceeds. The Band encourages the CGCC to immediately cease its efforts to unilaterally adopt and enforce CGCC-8 and instead comply with the clear and express terms of the Compact.

Respectfully,

Bo Mazzetti
Vice-Chairman

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Rincon Band of Luiseño Indians

PO Box 68 Valley Center, CA 92082 • (760) 749-1051 • Fax: (760) 749-8901

November 19, 2008

California Gambling Control Commission
2399 Gateway Oaks Drive #100
Sacramento, California 95833

Re: Rincon Band of Luiseño Indians Opposition to CGCC-8

Members of the California Gaming Control Commission:

The Rincon Band of Luiseño Indians ("Band") opposes the CGCC's efforts to adopt CGCC-8 in the strongest of terms. The Band encourages the CGCC to withdraw this proposed regulation and instead work cooperatively with tribal Compact signatories to find a solution to the CGCC's general concerns that is within the metes and bounds of the Compact. Alternatively, if the CGCC's general concerns are not addressed within the Compact, we encourage the CGCC to request that the Governor's office initiate government to government negotiations with the Band.

The Band opposes CGCC-8 for the following reasons:

1. CGCC-8 Must be the Subject of Government to Government Negotiations and a Compact Amendment.

Pursuant to the Compact between the State of California and the Rincon Band, the Tribal Gaming Agency ("TGA") is the primary regulator of all aspects of gaming, gaming operation and management of the Rincon Band's gaming operation. See Compact §§ 7.1, 7.2, 8.1 *see also* 25 U.S.C. 2701 et seq. The TGA (also "Rincon Gaming Commission") is solely vested with the authority and responsibility for promulgation and enforcement of rules and regulations regarding Minimum Internal Control Standards ("MICS"). The Rincon Gaming Commission has adopted MICS and enforces those standards. There is no language within the Compact, or elsewhere in federal law, which delegates promulgation and enforcement authority of MICS to the State Gaming Agency. Furthermore, the Compact does not vest the CGCC with the authority to unilaterally adopt and enforce rules pursuant to section 8.4 of the Compact over the objection of the Association.

The CGCC response to the Association's previous comments sets forth the following statement of contract construction: "Any other interpretation would render subsection (b) mere surplusage, and such a construction must be avoided. (*Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495,503 [language in a contract must be interpreted as a whole and constructions that render contractual provisions surplusage are disfavored]). Application of that standard to CGCC-8's impact on Compact §§ 7.1, 7.2 and 8.1 reveals the error in the CGCC's

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action. The CGCC cannot adopt a regulation that renders existing Compact provisions void or a nullity.

The auditing and compliance review provisions of CGCC-8 provide for significant, unnecessary and unwarranted intrusion by the CGCC. Such new requirements are well beyond the scope of the Compact and would constitute a de facto amendment to the Compact. The authority to audit and conduct compliance reviews based upon standards not found in the text of the Compact is one best discussed in the Compact amendment context.

Should the CGCC wish to assume a regulatory role that is different than that described within the Compact, the appropriate venue for such a change is government to government negotiations and the Compact amendment process.

2. There is no Void in Regulation. There is no Need for CGCC-8.

The substance of CGCC-8 is unnecessary as there is no void in regulation. The Band's gaming commission regulates internal control standards, auditing, and variances to internal control standards. Any effort by the CGCC to implement CGCC-8 is unnecessary and duplicative, in addition to being a violation of the Compact.

The Compact clearly provides that each Tribal Gaming Agency is vested with the authority to promulgate and enforce regulations regarding on-site gaming regulation. The terms of the Compact were not altered by the *CRIT* decision *Colorado River Indian Tribes v. National Indian Gaming Commission,* 466 F.3d 134 (D.C. Cir, 2006). The CGCC's previous response to Association comments improperly asserts that the *CRIT* decision "effectively eliminated the federal government's authority and jurisdiction to regulate Class III gaming in California, at least with regard to the Class III MICS." That is simply not true. Rather, the *CRIT* decision confirmed that NIGC never possessed such authority. The NIGC had no such authority in 1999 when the Compact was consummated. Hence, the limited authority agreed upon in the Proposition 1A compacts was done so with knowledge of the NIGC's limitations. CGCC is encouraged to discuss the matter with Mr. Manny Maderos, one of the State's lead negotiators. He was fully aware that NIGC's assertion of authority was always on the shakiest of legal grounds. If the State wanted the authority it now seeks, it should have done so in the context of the Compact negotiated in 1999.

Tribal Gaming Agencies, including the Rincon Gaming Commission continue to regulate Indian gaming. As further evidence, the regulations of the Rincon Gaming Commission include MICS which are no less rigorous that those found at 25 CFR § 542 et seq. Additionally, and as required by Section 8.1.8 of the Compact, the Rincon Gaming Commission ensures that an independent CPA conducts an audit of the Gaming Operation no less than annually.

As there is no void in regulation, there is no need for CGCC-8.

3. The State Has Failed to Demonstrate that the Existing Compact Provisions Are Inadequate.

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Repeatedly throughout the last eighteen months, the CGCC Chairman has asserted that there are Tribes out there operating without MICS or not enforcing MICS. He repeats this statement as his motivation for moving forward with CGCC-8. Yet, he has failed to document or identify such a Tribe. Even if the allegation is true, that Tribe would then be in violation of Compact §§ 7.1, 7.2 and/or 8.1. The State has the access needed to learn whether a violation exists and has enforcement authority under the Compact to cause corrective measures to be taken. The unsubstantiated motive for proceeding does not justify imposition of CGCC-8 on all Tribes. Rather, it justifies taking action under the existing Compact.

4. The Compact does not Provide the CGCC with the Authority to Unilaterally Amend the Compact.

The adoption and enforcement of CGCC-8 is in excess of the CGCC's authority as the Compact does not provide the CGCC with plenary power to modify the terms of the Compact at will. There is no provision within the Compact which states that the State Gaming Agency may promulgate and enforce the terms of CGCC-8 without Association approval. While the Compact provides the State with access to a Tribe's Gaming Facility and limited inspection rights of "papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance" with the Compact, there is no provision within the Compact which authorizes the State Gaming Agency to unilaterally alter the terms of the Compact and enact and enforce regulations regarding MICS and auditing. See Compact §§ 7.0– 7.4.4.

The Compact specifies a very limited role to the State Gaming Agency when considering regulations. That limited and very specific role is to submit proposed regulations to the Association for approval. Pursuant to Section 8.4.1(a):

> **Except as provided in subdivision** (d) **[Exigent Circumstances], no State Gaming Agency regulation shall be effective with respect to the** Tribe's **Gaming Operation unless it has been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.**

Again, the express terms of the Compact provide that, except in exigent circumstances, a State Gaming Agency regulation **cannot** be effective unless it is both (1) approved by the Association and (2) the Tribe has an opportunity to review and comment on the proposed regulation. These are the clear and plain terms of Section 8.4.1(a).

Any argument that the CGCC's reading of sections 8.4.1(b) or 8.4.1(c) can serve to negate the clear terms of 8.4.1(a) and provide a process whereby the CGCC can unilaterally enact and enforce a regulation would result in a completely unreasonable reading of the Compact. Under the CGCC's reading of 8.4.1, the language requiring approval by the Association would have no effect. The plain and specific terms of 8.4.1(a) cannot be negated merely upon unilateral demand by the CGCC. As such a reading is unreasonable and would result in absurd results, it should be clear to the Commission that the Compact does not authorize the State Gaming Agency to unilaterally adopt regulations over the objection of the Association.

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The proposed CGCC-8 circumvents the Compact amendment provisions of the existing Compact. It is a rewrite of sections 7 and 8, which designate the Tribal Gaming Agency as the entity establishing the minimum internal controls and enforcement of those controls. The proposal supplants the TGA with the CGCC and as such is subject to the Compact amendment process.

Government to Government Discussions are Appropriate in this Instance.

The proper forum for State Gaming Agency authority over the substance of CGCC-8 is the Compact amendment process. Any effort other than a government to government negotiation for amendment of the Compacts is void ab initio.

The Band incorporates by reference, previous comments and testimony submitted by the Band, and the formal response of the Association. The Band reserves the right to advance additional arguments against CGCC-8 at appropriate times and in additional forums as this process proceeds. The Band encourages the CGCC to immediately cease its efforts to unilaterally adopt and enforce CGCC-8 and instead comply with the clear and express terms of the Compact.

Respectfully,

Bo Mazzetti
Vice-Chairman

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MORONGO BAND OF MISSION INDIANS
11581 POTRERO RD., BANNING, CA 92220
PHONE:909-849-4697, FAX: 909-755-5109

FACSIMILE TRANSMITTAL SHEET

TO: Chief Counsel Evelyn Matteucci	FROM: Sharron Savage
COMPANY: California Gambling Control Commission	DATE: 11/20/2008
FAX NUMBER: 916-263-0452	TOTAL NO. OF PAGES INCLUDING COVER: 5
PHONE NUMBER:	SENDER'S PHONE NUMBER: 951.755.5112 Cell: 951.768.7184
RE: CGCC-8 Comment Letter	YOUR REFERENCE NUMBER:

X URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Please give me a call if there if any problem occurs during transmission of this letter.

Cordially,
Executive Recording Secretary Sharron Savage

2008 NOV 20 PM 1:34

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MORONGO
BAND OF
MISSION
INDIANS
A SOVEREIGN NATION

November 20, 2008

Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

VIA FACSIMILE (916-263-0452) ONLY

Dear Ms. Matteucci:

In accordance with Compact Section 8.4.1(c), and as requested by the CGCC, The Morongo Band of Mission Indians ("Morongo") hereby submits its comments regarding the Commission's re-adoption of CGCC-8 over the Association's disapproval of the proposed regulation. As explained below, the Tribe hereby objects to the purported re-adoption as contrary to the plain language of Section 8.4.1(c) and (d), which authorizes the Commission to adopt a regulation without obtaining the Association's prior approval only in exigent circumstances as provided in subdivision (d). Because the Commission has not found that exigent circumstances exist to justify adoption of the proposed regulation over the Association's objections, because no such circumstances in fact exist, and because the proposed regulation is unnecessary and unduly burdensome, the Tribe objects to the proposed regulation as an action that is beyond the Commission's limited authority under the Tribe's Compact.

Morongo agrees with the objections to CGCC-8 set forth in the Association's February 13, 2008, Task Force Report (except as the proposed regulation has been revised to accede to those objections), and will not reiterate them here. Instead, Tribe will focus its comments on the proper interpretation of Compact §8.4.1. Section 8.4.1(a) provides:

> (a) *Except as provided in subdivision (d)*, no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation. (emphasis added).

The language of the Compact, to which the State the Tribe both agreed, could not be clearer: the Commission can impose a regulation on a tribe if – and only if – subdivision (a)'s two prerequisites are met – *i.e.* (1) approval by the Association, *and* (2) review and comment by the Tribe. Subdivision (a) recognizes a single situation – exigent circumstances (set out in sub. (d)) – in which the Commission can dispense with these prerequisites. But in the absence of exigent circumstances – and the Commission has not even attempted to claim that they are present here – the Commission must obtain the Association's approval of a regulation. This interpretation of subd. (a) gives effect to the clear and explicit meaning of its terms; accordingly, it governs. *See*

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Bank of the West v. Sup. Ct. (1992) 2 Cal.4th 1254, 1265; Civ. Code §1364 ("The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.").

The Commission contends that it may circumvent Association approval by the simple expedient of responding to the Association's objections before re-adopting the materially identical regulation. In support of its interpretation, the Commission relies on §8.4.1(b), which states:

> (b) Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

The Commission argues that subd. (b) must "constitute[] a clear exception to the general requirement that the Association approve a regulation before it may be effective," because any contrary reading would render subd. (b) "mere surplusage." CGCC's *Detailed Response*, p.1, n.2. The Commission's position rests on a false premises and, in any case, raises more problems than it purports to solve.

Despite the Commission's claim to the contrary, the Tribe's reading of subd. (a) does not render subd.(b) mere surplusage. It is true that both subd. (a) and (b) mention the prerequisites of promulgating a regulation – Association approval and submission for tribal comments – but subd. (b) clarifies and elaborates on subd. (a)'s requirements. The first sentence of subd. (b) makes clear that Association approval is satisfied when the Association itself proposes a regulation – something that is at most implied by subd. (a). That sentence also authorizes the Commission to submit a regulation to the tribes only after obtaining Association approval; subd. (a) is silent on this point. The second sentence of subd. (b) addresses the Commission's particular obligations when the Association disapproves a proposed regulation – a topic that subd. (a) does not address. In sum, subd. (a) and subd. (b) both can be given effect without making either provision redundant or inconsistent.

In addition, the Commission urges a reading of subd. (b) that violates at least two canons of interpretation. Although subd. (a) expressly subjects Association approval of a regulation to one – and only one – exception (subd. (d)), the Commission interprets sub. (b) to constitute a second exception. To accept the Commission's position, one must ignore the crystalline language of subd. (a), and assume that the drafters were smart enough to use exception language with respect to subd. (a) but careless enough to [illegible] to a different

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subdivision without labeling it as an exception. Such a view is untenable. *See White v. Western Title Ins. Co.* (1985) 40 Cal.3d 870, 881 n.4 ("Under the familiar maxim of *expressio unius est exclusio alterius* it is well settled that, when a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded. This canon, based on common patterns of usage and drafting, is equally applicable to the construction of contracts.").

Moreover, if subd. (b) had been intended to authorize the re-adoption of any regulation over the Association's disapproval, it is hard to see what purpose would be served by subd. (a)'s language requiring pre-approval by the Association. As the Commission itself recognizes, an interpretation that renders another section mere surplusage must be avoided if at all possible. *Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 560 (interpretation that renders provisions "mere surplusage . . . violate[s] the principle that, where possible, the entire contract should be given effect. (Civ. Code, §1641.)"). As shown above, it is the Tribe's interpretation, not the Commission's, that gives effect to both subd. (a) and subd. (b).

Thus, if for no other reason than that what the Commission proposes to do is not within the Commission's authority under the Tribe's Compact, CGCC-8 should not be adopted in its present form.

Contrary to what the Commission has suggested, declining to adopt CGCC-8 at this time would not leave the State without protection against the possibility that some tribe, somewhere, might abdicate its regulatory responsibility to maintain internal controls consistent with industry standards and practice. This would be true even if virtually every California tribe had not already adopted MICS at least equal to the NIGC's MICS, which were based in part on tribally-developed MICS and thus set the industry standard or practice.

Compact Section 8.1 and its subsections set forth in great detail the minimum regulatory standards that each Tribal Gaming Agency must promulgate and enforce. The State could have insisted that the 1999 Compact and subsequent amended compacts include specific MICS or specific authority for the SGA to impose MICS; it didn't, and it must abide by the agreements that it negotiated. Rather, §8.1 implicitly recognizes that tribes may be differently situated, requiring MICS reasonably tailored to specific tribal needs, with the adequacy of those MICS determined on a tribe-specific basis. The Commission's imposition of a one-size-fits-all regime effectively would supplant the primacy of the tribal regulatory role acknowledged in the Compact.

Section 7.4 (and subdivisions) of the Tribe's Compact gives the State Gaming Agency unrestricted access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact. This section, when combined with the standards that §8.1 requires the Tribal Gaming Agency to promulgate and enforce, gives the State Gaming Agency all the tools necessary to ensure that the Tribal Gaming Agency is fulfilling its regulatory responsibilities without overriding the exercise of those responsibilities through the adoption of CGCC-8.

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If the foregoing were not enough to warrant the rejection of CGCC-8, the interactions the Tribe has had with Commission personnel give rise to a serious concern that CGCC-8 could become the vehicle for pretextual or other needless and costly burdens on tribal gaming regulators and gaming operations. As one recent example, earlier this year the Commission issued public statements about tribal use of allegedly "obsolete" software that raised questions about the honesty and integrity of tribal gaming. In fact, as was explained by GLI, the software in question was "obsolete" only in the sense that the manufacturer no longer supported the product, not because the software no longer was fully functional, and thus continued use of the software was entirely appropriate. The charitable explanation for the Commission's public position – which never has been publicly retracted – is that the Commission simply didn't understand the difference between "obsolete" and recalled software.

In an area as technical as MICS, there is a very real potential for similar misunderstandings based on a lack of knowledge or experience on the part of Commission staff. This could lead to disputes that would be costly and time-consuming to resolve. That is why a working group of tribal attorneys proposed a procedure for lower-level dispute resolution before the State could invoke the process set forth in §9 of the Compact – a proposal that the Commission rejected.

In short, the Tribe regards CGCC-8 to be an unnecessary solution to a non-existent problem. For that reason, and because adoption of CGCC-8 as proposed exceeds the Commission's authority under the Tribe's Compact, the Tribe urges the Commission to withdraw CGCC-8.

Very truly yours,

THE MORONGO BAND OF MISSION INDIANS

Robert Martin
Chairman, Tribal Council

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Exhibit A29

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FACSIMILE COVER SHEET

TO: Evelyn Matteucci, Chief Counsel

FAX: 916-263-0452

FROM: George Forman

DATE: November 20, 2008

RE: Cachil Dehe Band of Wintun Indians of the Colusa Indian Community's Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

TOTAL NUMBER OF PAGES (including cover sheet): 6

ORIGINAL WILL NOT FOLLOW

COMMENTS

Please see attached.

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CONTROL COMMISSION

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November 20, 2008

VIA FACSIMILE (916-263-0452) ONLY

Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Cachil Dehe Band of Wintun Indians of the Colusa Indian Community's Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

Dear Ms. Matteucci:

Forman & Associates, Attorneys at Law, is legal counsel to the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community ("Tribe"). Our client has requested that we submit the Tribe's objections to CGCC-8 on the Tribe's behalf.

In accordance with Compact Section 8.4.1(c), and as requested by the CGCC, the Tribe hereby submits its comments regarding the Commission's re-adoption of CGCC-8 over the Association's disapproval of the proposed regulation. As explained below, the Tribe hereby objects to the purported re-adoption as contrary to the plain language of Section 8.4.1(c) and (d), which authorizes the Commission to adopt a regulation without obtaining the Association's prior approval only in exigent circumstances as provided in subdivision (d). Because the Commission has not found that exigent circumstances exist to justify adoption of the proposed regulation over the Association's objections, because no such circumstances in fact exist, and because the proposed regulation is unnecessary and unduly burdensome, the Tribe objects to the proposed regulation as an action that is beyond the Commission's limited authority under the Tribe's Compact.

The Tribe agrees with the objections to CGCC-8 set forth in the Association's February 13, 2008, Task Force Report (except as the proposed regulation has been revised to

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accede to those objections), and will not reiterate them here. Instead, the Tribe will focus its comments on the proper interpretation of Compact §8.4.1. Section 8.4.1(a) provides:

> (a) *Except as provided in subdivision (d)*, no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation. (emphasis added).

The language of the Compact, to which the State the Tribe both agreed, could not be clearer: the Commission can impose a regulation on a tribe if – and only if – subdivision (a)'s two prerequisites are met – *i.e.* (1) approval by the Association, *and* (2) review and comment by the Tribe. Subdivision (a) recognizes a single situation – exigent circumstances (set out in sub. (d)) – in which the Commission can dispense with these prerequisites. But in the absence of exigent circumstances – and the Commission has not even attempted to claim that they are present here – the Commission must obtain the Association's approval of a regulation. This interpretation of subd. (a) gives effect to the clear and explicit meaning of its terms; accordingly, it governs. *See Bank of the West v. Sup. Ct.* (1992) 2 Cal.4th 1254, 1265; Civ. Code §1364 ("The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.").

The Commission contends that it may circumvent Association approval by the simple expedient of responding to the Association's objections before re-adopting the materially identical regulation. In support of its interpretation, the Commission relies on §8.4.1(b), which states:

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233

n.2. The Commission's position rests on a false premises and, in any case, raises more problems than it purports to solve.

Despite the Commission's claim to the contrary, the Tribe's reading of subd. (a) does not render subd.(b) mere surplusage. It is true that both subd. (a) and (b) mention the prerequisites of promulgating a regulation – Association approval and submission for tribal comments – but subd. (b) clarifies and elaborates on subd. (a)'s requirements. The first sentence of subd. (b) makes clear that Association approval is satisfied when the Association itself proposes a regulation – something that is at most implied by subd. (a). That sentence also authorizes the Commission to submit a regulation to the tribes only after obtaining Association approval; subd. (a) is silent on this point. The second sentence of subd. (b) addresses the Commission's particular obligations when the Association disapproves a proposed regulation – a topic that subd. (a) does not address. In sum, subd. (a) and subd. (b) both can be given effect without making either provision redundant or inconsistent.

In addition, the Commission urges a reading of subd. (b) that violates at least two canons of interpretation. Although subd. (a) expressly subjects Association approval of a regulation to one – and only one – exception (subd. (d)), the Commission interprets sub. (b) to constitute a second exception. To accept the Commission's position, one must ignore the crystalline language of subd. (a), and assume that the drafters were smart enough to use exception language with respect to subd. (d) but careless enough to relegate another exception to a different subdivision without labeling it as an exception. Such a view is untenable. *See White v. Western Title Ins. Co.* (1985) 40 Cal.3d 870, 881 n.4 ("Under the familiar maxim of *expressio unius est exclusio alterius* it is well settled that, when a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded. This canon, based on common patterns of usage and drafting, is equally applicable to the construction of contracts.").

Moreover, if subd. (b) had been intended to authorize the re-adoption of any regulation over the Association's disapproval, it is hard to see what purpose would be served by subd. (a)'s language requiring pre-approval by the Association. As the Commission itself recognizes, an interpretation that renders another section mere surplusage must be avoided if at all possible. *Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 560 (interpretation that renders provisions "mere surplusage . . . violate[s] the principle that, where possible, the entire contract should be given effect. (Civ. Code, §1641.)"). As shown above, it is the Tribe's interpretation, not the Commission's, that gives effect to both subd. (a) and subd. (b).

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234

Contrary to what the Commission has suggested, declining to adopt CGCC-8 at this time would not leave the State without protection against the possibility that some tribe, somewhere, might abdicate its regulatory responsibility to maintain internal controls consistent with industry standards and practice. This would be true even if virtually every California tribe had not already adopted MICS at least equal to the NIGC's MICS, which were based in part on tribally-developed MICS and thus set the industry standard or practice.

Compact Section 8.1 and its subsections set forth in great detail the minimum regulatory standards that each Tribal Gaming Agency must promulgate and enforce. The State could have insisted that the 1999 Compact and subsequent amended compacts include specific MICS or specific authority for the SGA to impose MICS; it didn't, and it must abide by the agreements that it negotiated. Rather, §8.1 implicitly recognizes that tribes may be differently situated, requiring MICS reasonably tailored to specific tribal needs, with the adequacy of those MICS determined on a tribe-specific basis. The Commission's imposition of a one-size-fits-all regime effectively would supplant the primacy of the tribal regulatory role acknowledged in the Compact.

Section 7.4 (and subdivisions) of the Tribe's Compact gives the State Gaming Agency unrestricted access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact. This section, when combined with the standards that §8.1 requires the Tribal Gaming Agency to promulgate and enforce, gives the State Gaming Agency all the tools necessary to ensure that the Tribal Gaming Agency is fulfilling its regulatory responsibilities without overriding the exercise of those responsibilities through the adoption of CGCC-8.

If the foregoing were not enough to warrant the rejection of CGCC-8, the interactions that Tribes have had with Commission personnel give rise to a serious concern that CGCC-8 could become the vehicle for pretextual or other needless and costly burdens on tribal gaming regulators and gaming operations. As one recent example, earlier this year the Commission issued public statements about tribal use of allegedly "obsolete" software that raised questions about the honesty and integrity of tribal gaming. In fact, as was explained by GLI, the software in question was "obsolete" only in the sense that the manufacturer no longer supported the product, not because the software no longer was fully functional, and thus continued use of the software was entirely appropriate. The charitable explanation for the Commission's public position – which never has been publicly retracted – is that the Commission simply didn't understand the difference between "obsolete" and recalled software.

In an area as technical as MICS, there is a very real potential for similar misunderstandings based on a lack of knowledge or experience on the part of Commission staff. This could lead to disputes that would be costly and time-consuming to resolve. That is why a

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working group of tribal attorneys proposed a procedure for lower-level dispute resolution before the State could invoke the process set forth in §9 of the Compact – a proposal that the Commission rejected.

In short, the Tribe regards CGCC-8 to be an unnecessary solution to a non-existent problem. For that reason, and because adoption of CGCC-8 as proposed exceeds the Commission's authority under the Tribe's Compact, the Tribe urges the Commission to withdraw CGCC-8.

Very truly yours,

FORMAN & ASSOCIATES

George Forman

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Exhibit A30

SOBOBA TRIBAL GAMING COMMISSION

FACSIMILE TRANSMITTAL SHEET

TO:
Evelyn Matteucci, Chief Counsel
California Gambling Control Commission

FROM:
Michael Castello, STGC Chairman

PHONE NUMBER:

DATE:
NOVEMBER 20, 2008

FAX NUMBER:
916-263-0452

TOTAL NO. OF PAGES INCLUDING COVER:
5

RE:
Notice of Re-Adoption of Uniform Tribal Gaming Regulations CGCC-8 (Minimum Internal Control Standards); 30-day comment period.

URGENT | FOR REVIEW | PLEASE COMMENT | PLEASE REPLY | PLEASE RECYCLE

2008 NOV 20 PM 4:34
CONTROL COMMISSION

23333 SOBOBA ROAD
P.O. BOX 610
SAN JACINTO, CA 92581
OFFICE 951-665-1000 EXT. 199 * FAX 951-487-0042

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SOBOBA TRIBAL GAMING COMMISSION
P.O. Box 810 • San Jacinto, CA • (951) 663-1000 • Fax (951) 487-9238

November 20, 2008

Evelyn M. Matteucci, Chief Counsel
State of California
Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Notice of Re-Adoption of Uniform Tribal Gaming Regulations CGCC-8 (Minimum Internal Control Standards); 30-day comment period

Dear Ms. Matteucci:

In accordance with Compact Section 8.4.1(c), and as requested by the CGCC, Soboba Band of Luiseno Indians ("Tribe") hereby submits its comments regarding the Commission's re-adoption of CGCC-8 over the Association's disapproval of the proposed regulation. As explained below, the Tribe hereby objects to the purported re-adoption as contrary to the plain language of Section 8.4.1(c) and (d), which authorizes the Commission to adopt a regulation without obtaining the Association's prior approval only in exigent circumstances as provided in subdivision (d). Because the Commission has not found that exigent circumstances exist to justify adoption of the proposed regulation over the Association's objet, because no such circumstances in fact exist, and because the proposed regulation is unnecessary and unduly burdensome, the Tribe objects to the proposed regulation as an action that is beyond the Commission's limited authority under the Tribe's Compact.

The Soboba Band of Luiseno Indians agrees with the objections to CGCC-8 set forth in the Association's February 13, 2008, Task Force Report (except as the proposed regulation has been revised to accede to those objections), and will not reiterate them here. Instead, Tribe will focus its comments on the proper interpretation of Compact §8.4.1. Section 8.4.1(a) provides:

> (a) *Except as provided in subdivision (d)*, no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation. (emphasis added).

The language of the Compact, to which the State the Tribe both agreed, could not be clearer: the Commission can impose a regulation on a tribe if -- and only if -- subdivision (a)'s two prerequisites are met – *i.e.* (1) approval by the Association, *and* (2) review and comment by the Tribe. Subdivision (a) recognizes a single situation – exigent circumstances (set out in sub. (d)) – in which the Commission can dispense with these prerequisites. But in the absence of exigent circumstances – and the Commission has not even attempted to claim that they are present here – the Commission must obtain the Association's approval of a regulation. This interpretation of subd. (a) gives effect to the clear and explicit meaning of its terms; accordingly, it governs.

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SOBOBA TRIBAL GAMING COMMISSION
PO Box 610 * San Jacinto, CA * (951) 663-1000 * Fax (951) 487-0042

See Bank of the West v. Sup. Ct. (1992) 2 Cal.4th 1254, 1265; Civ. Code §1364 ("The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.").

The Commission contends that it may circumvent Association approval by the simple expedient of responding to the Association's objections before re-adopting the materially identical regulation. In support of its interpretation, the Commission relies on §8.4.1(b), which states:

> (b) Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

The Commission argues that subd. (b) must "constitute[] a clear exception to the general requirement that the Association approve a regulation before it may be effective," because any contrary reading would render subd. b) "mere surplusage." CGCC's *Detailed Response*, p.1, n.2. The Commission's position rests on a false premises and, in any case, raises more problems than it purports to solve.

Despite the Commission's claim to the contrary, the Tribe's reading of subd. (a) does not render subd.(b) mere surplusage. It is true that both subd. (a) and (b) mention the prerequisites of promulgating a regulation – Association approval and submission for tribal comments – but subd. (b) clarifies and elaborates on subd. (a)'s requirements. The first sentence of subd. (b) makes clear that Association approval is satisfied when the Association itself proposes a regulation – something that is at most implied by subd. (a). That sentence also authorizes the Commission to submit a regulation to the tribes only after obtaining Association approval; subd. (a) is silent on this point. The second sentence of subd. (b) addresses the Commission's particular obligations when the Association disapproves a proposed regulation – a topic that subd. (a) does not address. In sum, subd. (a) and subd. (b) both can be given effect without making either provision redundant or inconsistent.

In addition, the Commission urges a reading of subd. (b) that violates at least two canons of interpretation. Although subd. (a) expressly subjects Association approval of a regulation to one – and only one – exception (subd. (d)), the Commission interprets sub. (b) to constitute a second exception. To accept the Commission's position, one must ignore the crystalline language of subd. (a), and assume that the drafters were smart enough to use exception language with respect to subd. (d) but careless enough to relegate another exception to a different subdivision without labeling it as an exception. Such a view is untenable. *See White v. Western Title Ins. Co.* (1985) 40 Cal.3d 870, 881 n.4 ("Under the familiar maxim of *expressio unius est exclusio alterius* it is well settled that, when a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded. This canon, based on common patterns of usage and drafting, is equally applicable to the construction of contracts.").

SOBOBA TRIBAL GAMING COMMISSION
PO Box 610 * San Jacinto, CA * (951) 663-1900 * Fax (951) 487-9012

Moreover, if subd. (b) had been intended to authorize the re-adoption of any regulation over the Association's disapproval, it is hard to see what purpose would be served by subd. (a)'s language requiring pre-approval by the Association. As the Commission itself recognizes, an interpretation that renders another section mere surplusage must be avoided if at all possible. *Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 560 (interpretation that renders provisions "mere surplusage . . . violate[s] the principle that, where possible, the entire contract should be given effect. (Civ. Code, §1641.)"). As shown above, it is the Tribe's interpretation, not the Commission's, that gives effect to both subd. (a) and subd. (b).

Thus, if for no other reason than that what the Commission proposes to do is not within the Commission's authority under the Tribe's Compact, CGCC-8 should not be adopted in its present form.

Contrary to what the Commission has suggested, declining to adopt CGCC-8 at this time would not leave the State without protection against the possibility that some tribe, somewhere, might abdicate its

Exhibit A31

BISHOP TRIBAL COUNCIL

2008 NOV 24 AM 11:59

November 13, 2008

Honorable Mr. Dean Shelton, Chairman
& Commission Members
Attention: Ms. Evelyn Matteucci, Chief Counsel
State of California
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231

Comments on Proposed Uniform Tribal Gaming Regulation CGCC-008

Dear Honorable Chairman Shelton and Commissioners:

On behalf of the Bishop Paiute Tribe I write this letter in response to the Proposed California Gambling Control Commission (CGCC) Re-Adoption of Uniform Regulation 008 - State Minimum Internal Control Standards, taken at the October 14, 2008 CGCC hearing held in Sacramento, California and letter mailed via-ground mail on October 20, 2008.

It is the position of the Bishop Paiute Tribe that the CGCC must adhere to the California Tribal –State Gaming Compact of 1999 Section 8 § 8.4.1.(a), (b), & (c) which states:

Section 8.4.1.

(a) Except as provided in subdivision (d), no State Gaming Agency regulation shall be effective with respect to the Tribe' Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation.

(b) Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

(c) Except as provided in subdivision (d), no regulation of the State Gaming Agency shall be adopted as a final regulation in respect to the Tribe's Gaming Operation before the expiration of 30 days after submission of the proposed regulation to the Tribe for comment as a proposed regulation, and after consideration of the Tribe's comments, if any.

It is the opinion of the Bishop Paiute Tribe that CGCC-008 cannot be adopted without the Association approval, other than by Section 8.4.1. (d) by exigent circumstances, which was in this case was not enacted for approval under this guise.

Sincerely,

M Bengochia

Monty Bengochia
Tribal Chairman

Cc: Bishop Indian Tribal Council
Bishop Paiute Gaming Commission
Ms. Gloriana Bailey, General Manger Paiute Palace Casino

PAIUTE PROFESSIONAL BUILDING • 50 TU SU LANE • BISHOP, CA 93514
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11-365

Exhibit A32

Smith River Rancheria

140 Rowdy Creek Rd, Smith River, CA 95567-9525
Ph: (707) 487-9255 Fax: (707) 487-0930

November 14, 2008

Mr. James B. Allen, Regulatory Actions Coordinator
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Uniformed Tribal Gaming Regulations CGCC-8

Dear Mr. Allen and Commissioners:

The 1999 Compact established a government-to-government relationship between the Smith River Rancheria and the State. According to the preamble the system of regulation of gaming fashioned by Congress in IGRA rest on an allocation of regulatory jurisdiction among three sovereigns, the federal government, the state in which a tribe has land, and the tribe itself.

No where in the Compact preamble does it state subdivisions of these sovereigns had the authority to unilaterally re-negotiate the terms set forth in the agreed upon compact. Any changes to the terms set forth in the 1999 Compact must be renegotiated between the two sovereigns, and new or additional regulatory requirements must be agreed to through government-to-government negotiations. The Tribe has acknowledged and accepted, our compact preamble statements, which only underscores that CGCC-8 is an unauthorized extension of the state's authority under our 1999 Compact. If terms are to be changed then there is a required negotiated compact amendment, which would specifically include regulatory provisions.

The Smith River Rancheria over many years has worked with the State Gaming Agency to cooperatively implement the regulatory provisions of the 1999 Compact, which have ensured the integrity of Indian gaming. It with a strong sense of disappointment in the approach taken by CGCC's to implement the CGCC-8. It is our view that CGCC-8 is unwarranted, redundant, and unduly burdensome and we cannot support it because it will only serve to violate our Compact.

Sincerely,

Kara Brundin Miller
Smith River Rancheria Tribal Chair

C: ` SRR Tribal Council
SRR Tribal Gaming Commission

Waa-saa-ghitlh-'a~ Wee-ni Naa-ch'aa-ghitlh-ni
Our Heritage Is Why We Are Strong

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Exhibit A33

Pauma Band of Mission Indians

P.O. Box 369 • Pauma Valley, CA 92061 • (760) 742-1289 • Fax (760) 742-3422

Established 1893

November 20, 2008

BY FAX (916-263-0452)

Attn: Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks, Suite 100
Sacramento, CA 95833

2008 NOV 25 AM 10: 43

RE: Comments Concerning CGCC's Re-Adoption of CGCC-8

Dear Ms. Matteucci:

This Pauma Band of Mission Indians ("Tribe") hereby submits its comments regarding the California Gambling Control Commission's ("CGCC") re-adoption of CGCC-8 on October 14, 2008.

As an initial matter, the Tribe objects to the comment deadline set by the CGCC. The Tribal-State Compact provides for a 30-day comment period, which commences "after submission of the proposed regulation to the Tribe." (Sec. 8.4.1 (c).) The CGCC has apparently interpreted this deadline as running from the date it sent the regulation to the Tribe. A more appropriate and reasonable interpretation of section 8.4.1(c) is that when a notice and regulation is served by mail, the 30-day comment period should be deemed to start five days after the mailing (*see, e.g.*, Code of Civil Procedure section 1013(a).) The Tribe therefore asks that the Commission accept as timely submitted any tribal comments received by the close of business on November 24, 2008.

As another preliminary matter, the Tribe objects to the CGCC's failure to include the joint comments submitted by the Tribe and the Pauma Gaming Commission in its "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)" or the exhibits attached thereto. These comments were submitted to the CGCC by letter dated February 19, 2008, and the Tribe requested that the letter be made part of the record for the February 21, 2008, meeting at which the CGCC was going to vote on CGCC-8. While the CGCC initially refused to make our comment letter part of the record, it reversed itself and sent us a letter dated September 24, 2008, in which it stated that it would make our comment letter "part of the overall CGCC-8 record" and assured us "it will be responded to along with all the other CGCC-8 letters."

The Pauma Gaming Commission brought this omission to the CGCC's attention in a letter dated October 13, 2008, which was submitted to the CGCC at its meeting on

With respect to the CGCC's re-adoption of CGCC-8, the Pauma Band of Mission Indians adopts and incorporates by reference herein the comments set forth in the attached Pauma Gaming Commission's letter of October 13, 2008. Without limiting the generality of the foregoing, the Tribe emphasizes that the CGCC's re-adoption of CGCC-8 is invalid and CGCC-8 has no legal effect with respect to the Tribe's gaming operation because it has not been approved by the Association, as expressly and clearly required by section 8.4.1(a) of the Tribal-State Compact. The only exception to prior approval of the Association is the "exigent circumstances" exception contained in section 8.4.1(a). In addition, since the CGCC amended CGCC-8 after it was reviewed by the Association, the amended version should have been re-submitted to the Association for approval and not sent out to the Tribe for comment.

The Tribe disagrees with the CGCC's position that section 8.4.1(b) provides an exception to the general rule of section 8.4.1(a) requiring prior Association approval. Section 8.4.1(b) cannot be read to negate or render meaningless the clear requirement for Association approval set forth in section 8.4.1(a). Moreover, an interpretation of section 8.4.1 that would permit the CGCC to unilaterally impose statewide regulations in the face of disapproval by the Association flies in the face of well-established principles of tribal sovereignty and, in particular, the rule that civil-regulatory laws do not apply to tribes in California. These principles formed the backdrop for the negotiation of the Tribal-State Compacts and it defies reason that the parties to the compacts would have created the Association specifically for the purpose of approving proposed state-wide gaming regulations but then permitted the CGCC to effectively override the Association by adopting a regulation that was not supported by any other delegate to the Association, including the other arm of the State Gaming Agency.

In summary, the Pauma Band of Mission Indians asks the CGCC not to adopt CGCC-8 as a final regulation and to either abandon the regulation or submit the amended version of CGCC-8 to the Association for consideration.

Respectfully,

Chris Devers, Chairman
Pauma Band of Mission Indians

c.c. Dean Shelton, Chairperson, CGCC
Dee Cline, President, Pauma Gaming Commission

November 20, 2008

BY FAX (916-263-0452)

Attn: Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks, Suite 100
Sacramento, CA 95833

RE: Comments Concerning CGCC's Re-Adoption of CGCC-8

Dear Ms. Matteucci:

This Pauma Band of Mission Indians ("Tribe") hereby submits its comments regarding the California Gambling Control Commission's ("CGCC") re-adoption of CGCC-8 on October 14, 2008.

As an initial matter, the Tribe objects to the comment deadline set by the CGCC. The Tribal-State Compact provides for a 30-day comment period, which commences "after submission of the proposed regulation to the Tribe." (Sec. 8.4.1 (c).) The CGCC has apparently interpreted this deadline as running from the date it sent the regulation to the Tribe. A more appropriate and reasonable interpretation of section 8.4.1(c) is that when a notice and regulation is served by mail, the 30-day comment period should be deemed to start five days after the mailing (*see, e.g.*, Code of Civil Procedure section 1013(a).) The Tribe therefore asks that the Commission accept as timely submitted any tribal comments received by the close of business on November 24, 2008.

As another preliminary matter, the Tribe objects to the CGCC's failure to include the joint comments submitted by the Tribe and the Pauma Gaming Commission in its "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)" or the exhibits attached thereto. These comments were submitted to the CGCC by letter dated February 19, 2008, and the Tribe requested that the letter be made part of the record for the February 21, 2008, meeting at which the CGCC was going to vote on CGCC-8. While the CGCC initially refused to make our comment letter part of the record, it reversed itself and sent us a letter dated September 24, 2008, in which it stated that it would make our comment letter "part of the overall CGCC-8 record" and assured us "it will be responded to along with all the other CGCC-8 letters."

The Pauma Gaming Commission brought this omission to the CGCC's attention in a letter dated October 13, 2008, which was submitted to the CGCC at its meeting on

With respect to the CGCC's re-adoption of CGCC-8, the Pauma Band of Mission Indians adopts and incorporates by reference herein the comments set forth in the attached Pauma Gaming Commission's letter of October 13, 2008. Without limiting the generality of the foregoing, the Tribe emphasizes that the CGCC's re-adoption of CGCC-8 is invalid and CGCC-8 has no legal effect with respect to the Tribe's gaming operation because it has not been approved by the Association, as expressly and clearly required by section 8.4.1(a) of the Tribal-State Compact. The only exception to prior approval of the Association is the "exigent circumstances" exception contained in section 8.4.1(a). In addition, since the CGCC amended CGCC-8 after it was reviewed by the Association, the amended version should have been re-submitted to the Association for approval and not sent out to the Tribe for comment.

The Tribe disagrees with the CGCC's position that section 8.4.1(b) provides an exception to the general rule of section 8.4.1(a) requiring prior Association approval. Section 8.4.1(b) cannot be read to negate or render meaningless the clear requirement for Association approval set forth in section 8.4.1(a). Moreover, an interpretation of section 8.4.1 that would permit the CGCC to unilaterally impose statewide regulations in the face of disapproval by the Association flies in the face of well-established principles of tribal sovereignty and, in particular, the rule that civil-regulatory laws do not apply to tribes in California. These principles formed the backdrop for the negotiation of the Tribal-State Compacts and it defies reason that the parties to the compacts would have created the Association specifically for the purpose of approving proposed state-wide gaming regulations but then permitted the CGCC to effectively override the Association by adopting a regulation that was not supported by any other delegate to the Association, including the other arm of the State Gaming Agency.

In summary, the Pauma Band of Mission Indians asks the CGCC not to adopt CGCC-8 as a final regulation and to either abandon the regulation or submit the amended version of CGCC-8 to the Association for consideration.

Respectfully,

Chris Devers, Chairman
Pauma Band of Mission Indians

c.c. Dean Shelton, Chairperson, CGCC
Dee Cline, President, Pauma Gaming Commission

PAUMA GAMING COMMISSION

October 13, 2008

BY FAX (916-263-0452)

Dean Shelton, Chairman
California Gambling Control Commission
2399 Gateway Oaks, Suite 100
Sacramento, CA 95833

RE: CGCC Meeting on October 14, 2008

Dear Chairman Shelton:

The Pauma Gaming Commission of the Pauma Band of Mission Indians submits this letter for the CGCC's consideration at its meeting on October 14, 2008, and requests that this letter be made part of the record for said meeting.

By letter dated February 19, 2008, the Pauma Band of Mission Indians and the Pauma Gaming Commission submitted its comments on CGCC-8 to the CGCC and asked that the letter be made part of the record for the February 21, 2008, meeting at which the CGCC was going to vote on CGCC-8. While the CGCC initially refused to make our comment letter part of the record, it reversed itself and sent us a letter dated September 24, 2008, in which it stated that it would make our comment letter "part of the overall CGCC-8 record" and assured us "it will be responded to along with all the other CGCC-8 letters."

However, the CGCC did not address our comment letter in its "Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)" or include our letter with the tribal comment letters appended to the Detailed Response. We are therefore writing to ensure that our original comment letter dated February 19, 2008, is included among the documents considered by the CGCC in formulating its decision. In addition, we ask that the CGCC trail this matter to a later date in order to ensure that our comment letter and all the other tribal comment letters concerning CGCC-8 received by the CGCC-8 prior to September 2008, which were not included in the Detailed Response or attached exhibits.

In addition, we would like to add the following additional comments: First, we have reviewed the proposed amendments to CGCC-8 dated October 1, 2008, and we do not believe the amendments adequately address the concerns we set forth in our letter of

Post Office Box 89 • Pauma Valley, CA 92061
Ph: (760) 742-1020 • Fax: (760) 742-3387

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February 19, 2008, or the concerns set forth in the Association's Regulatory Standards Taskforce Final Report and Statement of Need dated February 13, 2008, which we incorporated by reference in our comment letter. We therefore stand by our original comments and reiterate our request that the CGCC not re-adopt the amended regulation CGCC-8.

Secondly, the CGCC does not have the authority to unilaterally impose CGCC-8 after it has been rejected by the Association. Section 8.4.1, subdivision (a) of our Tribal-State Compact makes it clear that "no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation *unless it has first been approved by the Association* and the Tribe has an opportunity to review and comment on the proposed regulation" (emphasis added). The only exception to the requirement for Association approval is subdivision (d), which permits the adoption of regulations without Association approval in exigent circumstances. Since CGCC-8 was disapproved by the Association on September 4, 2008, it is our position that CGCC-8, even if re-adopted by the CGCC, will be ineffective as to the Pauma Gaming operation.

We understand that the CGCC may be relying on subdivision (b) of section 8.4.1, which contemplates that the CGCC may re-adopt a regulation that is disapproved by the Association, but the remainder of that subdivision and the section read as a whole makes it clear that subdivision (b) contemplates the CGCC being able to do so only when it is able to amend the regulation in a manner that overcomes the objections of the Association. As stated above, the proposed amendments to CGCC-8 fail to overcome the objections expressed at the Association meeting on September 4, 2008. The only valid option for the CGCC is to submit the amended CGCC-8 to the Association and seek the Association's approval of the amended regulation.

In summary, the Pauma Gaming Commission of the Pauma Band of Mission Indians asks that the CGCC not re-adopt CGCC-8 and, if it does so, that it submit the amended regulation to the Association in conformity with subdivision (a) of section 8.4.1.

Respectfully,

Lenora "Dee" Cline, President
Pauma Gaming Commission

c.c. Alexandra Vuksich, Commissioner, CGCC
Stephanie Shimazu, Commissioner, CGCC
Sheryl Schmidt, Commissioner, CGCC
Evelyn M. Matteuci, Chief Counsel, CGCC

Exhibit A34

AGUA CALIENTE BAND OF CAHUILLA INDIANS
TRIBAL COUNCIL

RICHARD M. MILANOVICH CHAIRMAN • JEFF L. GRUBBE VICE CHAIRMAN
MORAINO J. PATENCIO SECRETARY/TREASURER • JEANNETTE PRIETO-DODD MEMBER • VIRGINIA GILLESPIE MEMBER

November 25, 2008

2008 DEC -1 PM 1:11
CALIFORNIA GAMBLING CONTROL COMMISSION
RECEIVED

James B. Allen,
Regulatory Actions Coordinator
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, California 95833-4231

Re: Proposed Regulation CGCC-8

Dear Mr. Allen:

This letter is submitted by the Agua Caliente Band of Cahuilla Indians ("Tribe") in connection with the California Gambling Control Commission's ("Commission") consideration of Proposed Regulation CGCC-8. Although the Tribe declines to comment on the substance of CGCC-8, it is concerned with how the Commission is intending to enact the Proposed Regulation. It is our understanding that, although the Tribal-State Association ("Association") rejected CGCC-8, the Commission nonetheless intends to adopt this Regulation.

The prospect of adopting a non-emergency Regulation over the objection of the body responsible for creating such Regulations is, to say the least, troubling. The Commission's unilateral adoption of CGCC-8 not only contravenes the spirit of numerous Tribal-State Gaming Compacts, it flies in the face of precedent. Specifically, when the Association initially rejected the first version of what is now CGCC-7, the Commission did not automatically adopt the Regulation. Instead, the Commission considered and incorporated the tribes' comments, redrafted the Regulation and presented it to the Association, which adopted CGCC-7. It is this process, based upon the Tribal-State Gaming Compacts, which the Tribe now urges the Commission to again follow.

This Tribe sincerely hopes that the Commission considers its and all tribes comments in determining how to proceed with the rulemaking process, honoring the negotiated agreements between the State of California and the Indian tribes.

Sincerely,

Richard M. Milanovich
Chairman, Tribal Council
AGUA CALIENTE BAND OF CAHUILLA INDIANS

RMM: lf
TC-11173-11-08

Received by Licensing
DEC - 2 2008

C: Agua Caliente Gaming Commission, Joe Carlini, Executive Director

CGCC 250

Exhibit A35

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FORMAN & ASSOCIATES
ATTORNEYS AT LAW
4340 REDWOOD HIGHWAY, SUITE E352
SAN RAFAEL, CALIFORNIA 94903

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GEORGE FORMAN
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JEFF@GFORMANLAW.COM

FACSIMILE COVER SHEET

TO: Evelyn Matteucci, Chief Counsel

FAX: 916-263-0452

FROM: George Forman

DATE: November 20, 2008

RE: Sycuan Band of the Kumeyaay Nation's Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

TOTAL NUMBER OF PAGES (including cover sheet): 6

ORIGINAL WILL **NOT** FOLLOW

COMMENTS

Please see attached.

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FORMAN & ASSOCIATES
ATTORNEYS AT LAW
4340 REDWOOD HIGHWAY, SUITE E352
SAN RAFAEL, CALIFORNIA 94903

TELEPHONE: (415) 491-2310 FAX: (415) 491-2313

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November 20, 2008

VIA FACSIMILE (916-263-0452) ONLY

Evelyn Matteucci, Chief Counsel
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Sycuan Band of the Kumeyaay Nation's Comments re: Re-Adoption of Uniform Tribal Gaming Regulation CGCC-8 (Minimum Internal Control Standards)

Dear Ms. Matteucci:

Forman & Associates, Attorneys at Law, is legal counsel to the Sycuan Band of the Kumeyaay Nation ("Tribe"). Our client has requested that we submit the Tribe's objections to CGCC-8 on the Tribe's behalf.

In accordance with Compact Section 8.4.1(c), and as requested by the CGCC, the Tribe hereby submits its comments regarding the Commission's re-adoption of CGCC-8 over the Association's disapproval of the proposed regulation. As explained below, the Tribe hereby objects to the purported re-adoption as contrary to the plain language of Section 8.4.1(c) and (d), which authorizes the Commission to adopt a regulation without obtaining the Association's prior approval only in exigent circumstances as provided in subdivision (d). Because the Commission has not found that exigent circumstances exist to justify adoption of the proposed regulation over the Association's objections, because no such circumstances in fact exist, and because the proposed regulation is unnecessary and unduly burdensome, the Tribe objects to the proposed regulation as an action that is beyond the Commission's limited authority under the Tribe's Compact.

The Tribe agrees with the objections to CGCC-8 set forth in the Association's February 13, 2008, Task Force Report (except as the proposed regulation has been revised to

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accede to those objections), and will not reiterate them here. Instead, the Tribe will focus its comments on the proper interpretation of Compact §8.4.1. Section 8.4.1(a) provides:

> (a) *Except as provided in subdivision (d)*, no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation. (emphasis added).

The language of the Compact, to which the State the Tribe both agreed, could not be clearer: the Commission can impose a regulation on a tribe if – and only if – subdivision (a)'s two prerequisites are met – *i.e.* (1) approval by the Association, *and* (2) review and comment by the Tribe. Subdivision (a) recognizes a single situation – exigent circumstances (set out in sub. (d)) – in which the Commission can dispense with these prerequisites. But in the absence of exigent circumstances – and the Commission has not even attempted to claim that they are present here – the Commission must obtain the Association's approval of a regulation. This interpretation of subd. (a) gives effect to the clear and explicit meaning of its terms; accordingly, it governs. *See Bank of the West v. Sup. Ct.* (1992) 2 Cal.4th 1254, 1265; Civ. Code §1364 ("The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.").

The Commission contends that it may circumvent Association approval by the simple expedient of responding to the Association's objections before re-adopting the materially identical regulation. In support of its interpretation, the Commission relies on §8.4.1(b), which states:

> (b) Every State Gaming Agency regulation that is intended to apply to the Tribe (other than a regulation proposed or previously approved by the Association) shall be submitted to the Association for consideration prior to submission of the regulation to the Tribe for comment as provided in subdivision (c). A regulation that is disapproved by the Association shall not be submitted to the Tribe for comment unless it is re-adopted by the State Gaming Agency as a proposed regulation, in its original or amended form, with a detailed, written response to the Association's objections.

The Commission argues that subd. (b) must "constitute[] a clear exception to the general requirement that the Association approve a regulation before it may be effective," because any contrary reading would render subd. (b) "mere surplusage." CGCC's *Detailed Response*, p.1,

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n.2. The Commission's position rests on a false premises and, in any case, raises more problems than it purports to solve.

Despite the Commission's claim to the contrary, the Tribe's reading of subd. (a) does not render subd.(b) mere surplusage. It is true that both subd. (a) and (b) mention the prerequisites of promulgating a regulation – Association approval and submission for tribal comments – but subd. (b) clarifies and elaborates on subd. (a)'s requirements. The first sentence of subd. (b) makes clear that Association approval is satisfied when the Association itself proposes a regulation – something that is at most implied by subd. (a). That sentence also authorizes the Commission to submit a regulation to the tribes only after obtaining Association approval; subd. (a) is silent on this point. The second sentence of subd. (b) addresses the Commission's particular obligations when the Association disapproves a proposed regulation – a topic that subd. (a) does not address. In sum, subd. (a) and subd. (b) both can be given effect without making either provision redundant or inconsistent.

In addition, the Commission urges a reading of subd. (b) that violates at least two canons of interpretation. Although subd. (a) expressly subjects Association approval of a regulation to one – and only one – exception (subd. (d)), the Commission interprets sub. (b) to constitute a second exception. To accept the Commission's position, one must ignore the crystalline language of subd. (a), and assume that the drafters were smart enough to use exception language with respect to subd. (d) but careless enough to relegate another exception to a different subdivision without labeling it as an exception. Such a view is untenable. *See White v. Western Title Ins. Co.* (1985) 40 Cal.3d 870, 881 n.4 ("Under the familiar maxim of *expressio unius est exclusio alterius* it is well settled that, when a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded. This canon, based on common patterns of usage and drafting, is equally applicable to the construction of contracts.").

Moreover, if subd. (b) had been intended to authorize the re-adoption of any regulation over the Association's disapproval, it is hard to see what purpose would be served by subd. (a)'s language requiring pre-approval by the Association. As the Commission itself recognizes, an interpretation that renders another section mere surplusage must be avoided if at all possible. *Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 560 (interpretation that renders provisions "mere surplusage . . . violate[s] the principle that, where possible, the entire contract should be given effect. (Civ. Code, §1641.)"). As shown above, it is the Tribe's interpretation, not the Commission's, that gives effect to both subd. (a) and subd. (b).

Thus, if for no other reason than that what the Commission proposes to do is not within the Commission's authority under the Tribe's Compact, CGCC-8 should not be adopted in its present form.

Contrary to what the Commission has suggested, declining to adopt CGCC-8 at this time would not leave the State without protection against the possibility that some tribe, somewhere, might abdicate its regulatory responsibility to maintain internal controls consistent with industry standards and practice. This would be true even if virtually every California tribe had not already adopted MICS at least equal to the NIGC's MICS, which were based in part on tribally-developed MICS and thus set the industry standard or practice.

Compact Section 8.1 and its subsections set forth in great detail the minimum regulatory standards that each Tribal Gaming Agency must promulgate and enforce. The State could have insisted that the 1999 Compact and subsequent amended compacts include specific MICS or specific authority for the SGA to impose MICS; it didn't, and it must abide by the agreements that it negotiated. Rather, §8.1 implicitly recognizes that tribes may be differently situated, requiring MICS reasonably tailored to specific tribal needs, with the adequacy of those MICS determined on a tribe-specific basis. The Commission's imposition of a one-size-fits-all regime effectively would supplant the primacy of the tribal regulatory role acknowledged in the Compact.

Section 7.4 (and subdivisions) of the Tribe's Compact gives the State Gaming Agency unrestricted access to papers, books, records, equipment, or places where such access is reasonably necessary to ensure compliance with this Compact. This section, when combined with the standards that §8.1 requires the Tribal Gaming Agency to promulgate and enforce, gives the State Gaming Agency all the tools necessary to ensure that the Tribal Gaming Agency is fulfilling its regulatory responsibilities without overriding the exercise of those responsibilities through the adoption of CGCC-8.

If the foregoing were not enough to warrant the rejection of CGCC-8, the interactions that Tribes have had with Commission personnel give rise to a serious concern that CGCC-8 could become the vehicle for pretextual or other needless and costly burdens on tribal gaming regulators and gaming operations. As one recent example, earlier this year the Commission issued public statements about tribal use of allegedly "obsolete" software that raised questions about the honesty and integrity of tribal gaming. In fact, as was explained by GLI, the software in question was "obsolete" only in the sense that the manufacturer no longer supported the product, not because the software no longer was fully functional, and thus continued use of the software was entirely appropriate. The charitable explanation for the Commission's public position – which never has been publicly retracted – is that the Commission simply didn't understand the difference between "obsolete" and recalled software.

In an area as technical as MICS, there is a very real potential for similar misunderstandings based on a lack of knowledge or experience on the part of Commission staff. This could lead to disputes that would be costly and time-consuming to resolve. That is why a

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working group of tribal attorneys proposed a procedure for lower-level dispute resolution before the State could invoke the process set forth in §9 of the Compact – a proposal that the Commission rejected.

In short, the Tribe regards CGCC-8 to be an unnecessary solution to a non-existent problem. For that reason, and because adoption of CGCC-8 as proposed exceeds the Commission's authority under the Tribe's Compact, the Tribe urges the Commission to withdraw CGCC-8.

Very truly yours,

FORMAN & ASSOCIATES

George Forman

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Exhibit A36

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DRY CREEK RANCHERIA BAND OF POMO INDIANS

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Evelyn Matteucci, Chief Counsel	Jennifer Kelcher
COMPANY:	DATE:
California State Gambling Control	11/20/2008
FAX NUMBER:	TOTAL NO. OF PAGES, INCLUDING COVER:
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DRY CREEK RANCHERIA
BAND OF POMO INDIANS

November 20, 2008

Evelyn Matteucci, Chief Counsel
State of California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Comments on CGCC-8 as adopted on October 14, 2008

Dear Ms. Matteucci:

The Dry Creek Rancheria Band of Pomo Indians ("Tribe") is opposed to the proposal by the California Gambling Control Commission ("Commission") to adopt in final form the purported regulation known as CGCC-8. The Tribe appreciates and supports the efforts of the tribes and the Commission to reach agreement on a statewide standard for the internal regulation of gaming on Indian reservations. The Tribe believes that an important goal in its compact is the achievement of a mutually respectful government to government relationship in which the Tribe vigorously regulates in the first instance – from the exercise of the Tribe's governmental power to promulgate its own gaming regulations through the enforcement of those regulations -- and the State then verifies that the Tribe is doing its job. Unfortunately, proposed CGCC-8 is contrary to that goal. It purports to vest the State with the power to dictate the specific regulations that the Tribe is supposed to "promulgate," and then attempts to authorize the State to directly enforce both its and the Tribe's rules. The regulation thus subordinates tribal regulation, and thus the Tribe itself, to state regulation and jurisdiction.

That attempt to reconfigure the Tribe's negotiated relationship with the State without the benefit of mutual agreement is unacceptable and impermissible under the compact and federal law. We respectfully submit that if adopted, CGCC-8's inevitable consequence will not be effective regulation on a statewide basis. Instead, it will launch time-consuming and expensive litigation that will simply widen the gulf between the tribes and the State, thereby ruining the chance that those parties had of reaching the mutually respectful and complementary regulatory goals envisioned in the compacts.

Instead, we propose a different direction than the approach being taken in CGCC-8. In doing so, we address two goals: the setting of a common "MICS standard" against which compact compliance can be measured and as to which we, and we believe most other tribes, have little quarrel, and the avoidance of confrontation between the State's and the tribes' regulators over this issue. It is submitted that both goals can be achieved simply by either adopting a

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mutual declaration, through the Association, of a mutually acceptable (but not mandatory) standard for internal control monitoring through use of the NIGC MICS, or even unilaterally offering guidance, similar to the kind of "safe – harbor" approach utilized by the SEC and other regulatory bodies, as to what the State believes should be contained in the regulations promulgated by the Tribal agency. If that standard is the NIGC MICS, then its acknowledged acceptance by the State as an acceptable standard should be enough to remove the need to unlawfully attempt to compel the tribes to adopt that standard. No compact amendment would be implied by this approach, nor would an amendment be necessary.

This response primarily addresses the first goal, namely the MICS incorporation into the tribes' regulations, but should not be read as an acceptance of the balance of CGCC-8 as presently drafted. That document's mandates regarding enforcement are also unnecessarily contentious, since rather than simply setting forth a mutually acceptable protocol for testing a tribe's compliance with its own regulatory obligations, it virtually substitutes the State's direct enforcement of the Tribe's obligation. We have focused primarily on the first goal regarding MICS adoption, however, on the theory that if we cannot reach agreement with the State on it then there is not likely to be agreement on the remaining CGCC-8 issues.

A Procedural and Jurisdictional, Rather Than Substantive, Issue

As should be apparent from the tribes' continuing adherence to the National Indian Gaming Commission's Class III MICS that, despite the *CRIT* decision, the issue with CGCC-8 is not the MICS standard itself but is instead a procedural one. Under the proposed regulation, the State seeks to *force* the MICS standard on the tribes. Nothing in the compact gives the State the right to do that. Because of a potential precedent that could be set if the State is permitted to unilaterally impose gaming regulatory obligations on a tribe that are not contained in its compact, tribes have little choice but to resist this process. Rather than provoking an inevitable legal challenge, however, it is submitted that compliance with and enforcement of the MICS could be assured without confrontation if the State were to take the approach suggested below.

The first step is the acknowledgment that Section 8.1 vests *the Tribe* with the responsibility to "promulgate rules and regulations or specifications governing the various subjects designated in sections 8.11 et sec. and to ensure their enforcement in an effective manner." While the Section 8.1 subsections provide broad and comprehensive coverage of virtually all aspects of gaming, *the details on how to do that under the compact was left to the Tribe.* Those areas to be regulated include:

- ***physical safety of patrons and employees*** (Sec. 8.1.2);
- ***physical safeguarding of gaming facility assets*** (Sec. 8.1.3);
- ***prevention of illegal activity***, including appropriate employee procedures and surveillance systems (Sec. 8.1.4);
- ***recording of incidents that deviate from normal operating procedures*** (Sec. 8.1.5);
- ***procedures designed to permit detection of irregularities, theft, cheating, fraud or the like, "consistent with industry practice,"*** (Sec. 8.1.6);
- ***barred patron processes*** (Sec. 8.1.7);

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- ***audits of the operation by an independent CPA firm*** at least annually in accordance with industry practices for auditing casinos (Sec.8.1.8); and
- ***rules and regulation for each game (Sec. 8.1.9);***
- ***rules that address the method of play, odds, prize determinations, betting limits, industry standard resolution of patron disputes*** (Sec. 8.1.10);
- ***closed circuit televised surveillance systems*** (Sec. 8.1.11);
- ***cash cage processes*** (Sec. 8.1.12);
- ***minimum staff requirements*** for each gaming activity (Sec. 8.1.13); and
- ***technical standards and specifications for Gaming Devices that meet the industry standards*** for such devices (Sec. 8.1.14).

Nothing in Section 8 or anywhere else in the compact requires the Tribe to adopt regulations that embody the MICS as such or contain any other particular words or regulatory system for accomplishing the above goals. While section 7.1 recites that it is the Tribe's responsibility to regulate under the compact and to "adopt and enforce regulations, procedures and practices" to do so, two tribes operating under the same compact could devise, for example, two completely different systems for "detecting irregularity and theft." The NIGC's MICS provide one method for doing so, but other gaming agencies here or abroad, or the Tribe itself, might devise equally effective but substantially different means for accomplishing the same thing. Deployments of equipment, staffing, and the like could vary widely and still be competent and in full compliance with the compact. Indeed, the MICS themselves provide for variances among tribes in recognition that different methods of regulation may have to be employed in certain circumstances.

Indeed, the proposed CGCC-8's own references to regulations that "meet or exceed" the MICS (see Section (b)), rather than simply requiring verbatim adoption of those standards, appears to recognize that it is the substantive goal of the MICS rather than their form that is important. The only disagreement at this point, then, is over the imposition of a *requirement* that the MICS *themselves* be the standard, which is nowhere mandated in the compact.

It should be noted that the Tribe has no real disagreement over the need for a common standard, or that the MICS are inappropriate to serve as that standard. Uniformity is important if regulation is to be measured and verified by the State in an efficient way. While the compact permits each tribe to devise its own set of regulatory approaches so long as the 8.1 goals are met, it is impractical for each tribe to reinvent the regulatory standards wheel, and few if any tribes have tried to do so. Most tribes already use the MICS as their model in promulgating regulations under the compact. It could also be detrimental to the tribes to require the State to test a tribe's enforcement of its own regulations if they differ substantially from tribe to tribe. Inspections and compliance reviews are intrusive, distracting and disruptive. The easier it is for the State to see that a tribal gaming agency is meeting its regulatory requirements, the better it is not only for the State, but for the tribes as well.

Because the section 8.1 regulatory goals are so broad, and the tribes' methods for meeting those goals through regulatory drafting are so potentially variable, and because the compact respects the sovereign individuality of each tribe's power to govern within its own jurisdiction so long as it meets the section 8.1 generalized goals, a gap in regulatory specificity and uniformity

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exists. The State cannot attempt to close the gap by unilaterally imposing additional requirements on the Tribe (which would require a compact amendment), and its attempts to try to do so through proposed CGCC – 8 will surely lead to costly, divisive and delaying litigation. For those reasons, it is submitted that there is a better way to bridge the gap without confrontation or a diminishment of either the tribes' or the State's sovereign powers.

The proposal would be that the State simply *announce*, or better (but not required, see below), reach agreement with the tribes through the Association, that the State's interpretation of the compact's regulatory promulgation requirement is that ***adoption of the MICS as the basis of its section 8.1 regulations (and any other internal control regulations that may be required in the compact) will be considered to be a reasonable approach to meeting the compact's requirement that proper internal control regulations be promulgated.***

There is no need to mandate compliance with the MICS, since a tribe that wants to be reasonably sure that its regulations will meet the compact's broad regulation promulgation requirement insofar as the State was concerned would need only adopt the MICS. Most tribes have done so anyway, and ***there are few reasons why a tribe would not, since it would be a relatively certain way for a tribe to be assured in advance that its regulations were in compliance with the compact.*** Tribes that did not adopt the MICS in light of such an announced policy would not be in breach per se (since the compact does not require adoption of the MICS), as the proposed CGCC-8 now suggests, but would run the risk that their alternative regulations might not be considered by the State to fully address the section 8.1 criteria, thus inviting conflict with the State and the possible expense of either rewriting its regulations or litigating the matter. It would simply reward tribes with some reasonable assurances of compliance for doing what they are already doing and provide certainty to one more area of the compact, but without amending it.

The announcement of a State MICS standard that encourages, but does not force, tribal adoption, supports efficient, effective and objective enforcement by the State. While such an announcement forces nothing on a tribe, it also takes nothing away from the State. If a tribe adopts the MICS following the approach suggested by the State, it will know with reasonable certainty what the basis of the State determination of whether a Tribe is carrying out its responsibilities will be, leaving only the actual determination of the Tribe's enforcement of that standard as the remaining issue, whereas if a tribe decides not to follow the safe-harbor of MICS adoption, the State would be no worse off then it is under the existing broad terms of the compact and could challenge the Tribe's fundamental compact obligation to adopt and enforce appropriate internal control regulations. Thus, without imposing a purported mandate, the State would be left with a uniform standard against which it could test tribal regulatory enforcement compliance in the area of internal controls.

Ideally, the State and the tribes would jointly adopt the following language through the Association, but frankly the State could do this unilaterally, not necessarily by issuing a regulation (although under some circumstances that could be possible; to be discussed in the next stage), since it is not being forced on the Tribe. It simply constitutes the State's own declaration of *one way*, in its opinion, that a compact's tribal regulatory drafting requirement can be met:

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(b) INTERNAL CONTROL STANDARDS. Each tribe shall promulgate rules and regulations or specifications ("Tribal Internal Control Standards" or "TICS") regarding the operation of Class III gaming activities by the Tribe in accordance with Section 8.1 of the 1999 compact, or any comparable section of new or amended compacts, and shall make such rules and regulations available for inspection by the SGA in accordance with Section 7.4 of such compact. A tribe's promulgation of TICS that equal or exceed the Minimum Internal Control Standards (MICS) set forth at 25 CFR Part 542 (as in effect on October 1, 2006), are an example of appropriate regulations under Section 8.1.

(c) INTERNAL CONTROL SYSTEM. Each Tribe shall ensure that its Gaming Operation implements and maintains an internal control system that, at a minimum, ensures compliance with the TICS that apply to its Class III gaming activities.

The foregoing is an approach that we believe does two important things:

1) It leads to the likely adoption of the MICS without amending the compact. In those few instances where tribes do not adopt the "safe-harbor" of MICS adoption, it keeps intact the State's full powers to inspect for a tribe's compliance and enforcement under section 8.1. We submit that there will be few instances where MICS will not have been adopted, however, particularly after a non-adopting tribe realizes the burden and disruption, and possible expense, it will be left with in demonstrating compliance with each of the 8.1 subsections in connection with non-MICS conforming regulations.

(2) It also establishes a model for revising other parts of proposed CGCC-8 where there are additional attempts to amend the compact by inserting procedures and requirements that were not agreed upon. As noted in the beginning of this response, we have refrained from addressing those here since, if the MICS "safe-harbor" promulgation approach is not conceptually acceptable, there is no point in taking the time on the other problematic areas, which mostly relate to new burdens on tribes with respect to audits, de novo and duplicative enforcement, mandated tribal action plans, and their costs and requirements. It is submitted that the same results described with respect to the MICS adoption can be applied to these issues as well by tying them into existing requirements in the compact and developing a way in which compliance with a prescribed course as an example of probably compact compliance can fulfill the State's need to be assured of tribal enforcement without expanding the authority granted to it under the compact.

In the latter regard, we note in general that proposed CGCC-8 does far more than flesh out a reasonable method by which the State can determine that tribal gaming agencies are enforcing their own regulations. Instead, it places the State in the position of reviewing not the actions by the tribal gaming agency (which could include some reasonable sampling to verify that a tribe is in fact engaged in the kind of enforcement of its own rules that it professes to be following), but to enforce the regulations directly within the facility. That approach is obviously problematic, unnecessary and in excess of the State's authority under the compact. Assurance

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that all of the regulatory steps that are necessary are being taken by a tribal gaming agency simply does not require that the State undertake its own regulation of a tribal casino. That issue would have to be addressed as well, but we submit is easily resoluble in an effective, yet compact consistent manner, in the same way described above. We look forward to the opportunity to working with the State on that issue as well.

We would respectfully request that the foregoing approach be considered and discussed with the tribes, and sufficient time be allowed to explore the possibilities of achieving a more mutually acceptable method for achieving uniform and effective internal control regulation than proposed CGCC-8 now represents. Because most of the tribes already follow the MICS, and the State's power to assure itself that they are doing so would not be impaired as issue is further discussed, the benefits of pursuing all possible approaches to a resolution of this issue would seem, as a matter of sound regulatory policy and tribal-state relations, to warrant further consideration of proposed CGCC-8 and outweigh any concerns about delay, and the Tribe would respectfully request that you do so.

Respectfully submitted,

Harvey Hopkins, Chairman
Dry Creek Rancheria Band of Pomo Indians

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2008 DEC -1 PM 12:43

November 18, 2008

VIA U.S. MAIL
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, 95833-4231
Attn: Chairman Dean Shelton

Re: Re-Adoption of CGCC-8 (Minimum Internal Control Standards)

Dear Chairman Shelton:

The Coast Indian Community of the Resighini Rancheria (Tribe) provides the following responses to the California Gambling Control Commission's (CGCC) re-adoption of proposed uniform CGCC-8.

The Tribe is greatly concerned that the CGCC has decided to re-adopt CGCC-8 despite the overwhelming opposition and disapproval by the Tribal State Association after a very lengthy review period. Specifically, the CGCC was privy to, over the course of some twenty (20) months, numerous arguments against CGCC-8's implementation and adoption in various forms and CGCC-8's structural flaws. To this end the CGCC has so far failed miserably in its attempt to both justify the need for CGCC-8 and its re-adoption as a regulation, but most disturbing is the announced intent to promulgate CGCC-8 outside the agreed upon procedures for implementing gaming regulations in conjunction with the Tribal-State Association (Association), contained in the various versions of the Tribal-State Compact.

First, the means of re-adoption and the CGCC's refusal to submit CGCC-8 to the Association for a vote of approval is inconsistent with the language of the 1999 Tribal-State Compact (Compact), contractual language that the Tribe agreed to with the State of California and relies upon, which specifically states:

> "...no State Gaming Agency regulation shall be effective with respect to the Tribe's Gaming Operation unless it has first been approved by the Association and the Tribe has had an opportunity to review and comment on the proposed regulation..." [1]

This simple two-part process could not be clearer. However, the apparent failure of the CGCC to forward the re-adopted version of CGCC-8 to the Association following the

[1] See Tribal-State Compact at Section 8.4.1 (a).

during the State's infancy, during the State's early years of its dealings with Indians.[2] If the Tribe cannot rely on the agreed upon Compact language of Section 8.4.1, in its entirety, for practical purposes the Tribe cannot reasonably rely on the State to honor *any* of its commitments or language contained within the Tribe's Compact or the various Compacts in existence.

Second, the CGCC cannot justify the need for CGCC-8. In its Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8)[3], the CGCC makes various justifications for the implementation of CGCC-8, which include: the presumed vacuum in regulation left by the Colorado River Indian Tribes decision; the State Gaming Agency's Authority under the various Compacts, Applications outside Tribal Gaming, uniformity in regulations, absence of alternatives to regulation and regulatory duplication. These points are discussed in detail below.

i. The CRIT Decision

In its support of CGCC-8 the CGCC argues that the Colorado River Indian Tribes (*CRIT*) decision and a supposed "vacuum" in regulation is the chief component for the policy rational behind the implementation of CGCC-8. However, this rational is misguided and although the *CRIT* decision held that the National Indian Gaming Commission (NIGC) lacked the authority to promulgate or enforce Minimum Internal Control Standards for Class III gaming, under basic contract law, the decision cannot unilaterally, nor does it, alter the terms of any of the Tribal-State Compacts.[4]

The State could have addressed its MICS concerns at the time of entering its 1999 Tribal-State Compact with sixty-one (61) tribes, but it failed to do so. Additionally, in subsequent compacts, the State also failed to include any reference to or negotiate for MICS provisions until 2006—and in doing so, MICS was included as a negotiated bargained for exchange. Thus, in the absence of the State demonstrating a concern for MICS, introduction of the CGCC-8, some nine-years after signing its initial Tribal-State Compact, is unjustified. Moreover, the absence of any need for a State mandated MICS within the last nine (9) years is telling and infers that until the CGCC's introduction of CGCC-8, the State believed whole heartedly that the Compact provided the Tribes with the primary responsibility over tribal gaming regulation, including MICS.

Additionally, included within its *CRIT* premise of need is that CGCC-8 is required to preserve independent oversight of Tribal MICS compliance, which will in turn increase public confidence in tribal gaming. The CGCC has not provided any evidence demonstrating a lack of independent oversight within tribal gaming, or evidence that the

[2] It should be noted that when the Association previously disapproved a different proposed regulation, specifically CGCC-7, consistent with Section 8.4.1, the CGCC revised the disapproved regulation addressing noted deficiencies, re-adopted the revised version and then appropriately presented CGCC-7 back to the Association for approval prior to being sent to the tribes for comment and ultimately implemented.

[3] See CGCC's Detailed Response to Tribal-State Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8).

[4] See *Colorado River Indian Tribes v. NIGC*, 466 F.3d 134 (D.C. Cir. 2006).

public lacks confidence in any of the games or devices operated by California tribes. Alternatively, the results of the Tribal Regulators Networking Group survey indicate otherwise, that the NIGC's federal MICS remains the standard for tribal gaming operations in California, notwithstanding *CRIT*.[5] Additionally, the general public is likely unaware of the purpose or existence of MICS and to allege that public confidence will increase due to the implementation of CGCC-8 is unsupportable.

Finally, the CGCC's use of the *CRIT* decision as the basis of CGCC-8's implementation also fails to address the regulations inclusion of financial audits. The *CRIT* decision does not touch upon nor address the role assumed by the NIGC concerning financial audits nor does the decision alter and/or modify the requirement of a yearly independent financial audit as set forth under Section 8.1.8 of the Compact and Indian Gaming Regulatory Act (IGRA) at 25 U.S.C. 2710(b)(2)(C).[6] As this federal requirement remains untouched by the *CRIT* decision, there appears to be no legitimate reason for the inclusion of financial audits within CGCC-8.

ii. Legal Authority

The CGCC cites to Compact Sections 8.4.1, 8.1.8 and 7.4 as the legal authority for implementing CGCC-8. (See CGCC "Statement of Need for Adoption of Regulation regarding Minimum Internal Control Standards (CGCC-8)," dated April 6, 2007). However, none of these Sections provide any legal authority for CGCC to unilaterally impose CGCC-8 upon the Tribes outside of the agreed upon procedures set forth in Section 8 of the various compacts.

Compact Section 8.4 provides for "regulations adopted by the State Gaming Agency in accordance with Section 8.4.1," which require Association approval. The purpose of this regulatory adoption process is to "foster statewide uniformity of regulation of Class III gaming operations throughout the state "so that 'rules regulations, standards, specifications, and procedures of the Tribal Gaming Agency in respect to any matter encompassed by Sections 6.0, 7.0 and 8.0 shall be consistent." Thus, in the absence of complying with Section 8.4, uniformity in gaming regulations is compromised. Additionally, nowhere within the Compact does it provide the State the authority for unilateral adoption of regulations or to materially alter express provisions of the Compact or render any provisions null, void or unnecessary.

Materially altering express provisions of the Compact and or interpreting it in a manner wholly inconsistent with the written Compact language is exactly what the CGCC is attempting to accomplish to justify its adoption of CGCC-8. In its October 1, 2008 Explanatory Summary of Proposed Changes to CGCC-8 Minimum Internal Control Standards (MICS)(Amended Form Dated October 1, 2008) to be Considered at the October 14, 2008 Meeting, CGCC Chief Counsel, Evelyn M. Matteucci, referenced the *Boghos v. Certain Underwriters at Lloyd's of London* case in support of the proposition that the CGCC may adopt CGCC-8 outside the process set forth in the various forms of

[5] See attached Tribal Regulators Networking Survey
[6] 25 U.S.C §2710 et seq.

the Compact.[7] However, a review of the *Bogus* case, at footnote 1, ironically states that "where language is clear and express, it governs."[8] A review of Section 8.4 indicates there exists no ambiguity within the express written language requiring the interpretation permitted by *Bogus*, much less interpretation and/or deviation from the express and unambiguous language set forth by the various Compacts. In short, Mrs. Matteucci 's Compact interpretation and language wizardry is nothing more than a half hearted attempt to create a favorable legal interpretation and cloud the meaning of an otherwise perfectly clear regulatory approval process.

iii. Applications Outside Tribal Gaming

The CGCC readily admits that there presently exist no MICS provisions for any other form of gaming within the State of California. And although the State spent time and effort drafting MICS provisions for California's cardrooms, the cardroom industry and its various working groups, arrived at the conclusion that the final product revealed a lack of understanding of the purpose of MICS and how they should be applied in a cardroom environment. Moreover, the MICS provisions presented were a composite of NIGC's MICS and various other MICS statutes from other gaming states. As of the date of the February 2008, Association Regulatory Standards Taskforce Final Report Statement of Need Re: CGCC-8 report, some five years after the State's 2003 attempt to draft MICS provisions, no cardroom MICS provisions have been adopted.

Ironically, concerning cardroom regulation the CGCC has *plenary* authority to adopt and implement MICS upon non-tribal gaming facilities throughout California. And although cardrooms and tribal gaming facilities have similar operational requirements, namely table games operations, currency drop and count and surveillance departments, the State does not, nor has it required, card rooms to implement MICS provisions. The fact that CGCC has permitted cardrooms to operate without MICS is both telling and discriminatory. It is also disturbing that the State does not act when it has *plenary* authority over a billion dollar cardroom industry, but affirmatively acts to impose its will upon California's tribal gaming industry, when it lacks the authority to do so.

iv. Uniformity in Regulation

The CGCC next alleges that CGCC-8 will "foster uniformity" within California's tribal gaming regulatory environment. CGCC-8 is not required to foster uniformity, because uniformity already exists. A Tribal Networking Group survey indicates that NIGC MICS remain the minimum standards for internal controls for California Indian tribes, despite the *CRIT* holding. Moreover, the fact is that Indian tribes, including California tribes, first supported the adoption of MICS to protect the integrity of Indian gaming as well as protecting tribal assets, the very heart of the purpose and policy of Indian gaming as set forth under the IGRA. Those tribes who were members of the National Indian Gaming Association (NIGA) in the 1990's initiated what was referred to as the "MICS Work Group", and tribes voluntarily offered the services of their professionals, including

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[7] *See Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495)
[8] *Bank of the West v. Superior Court* (1992) 2, Cal.4th 1254, 1264.

internal auditors, accountants, gaming commissioners, managers, attorneys, etc., in developing a model MICS to be used by gaming tribes.

This model of cooperative MICS adoption is in stark contrast to the draconian adoption of MICS outside the legal parameters of adoption included in the various Compacts and which again smacks of unilateralism and paternalism. Moreover, compact regulatory uniformity will be very difficult to accomplish given the State's penchant for negotiating compact provisions with different goals and objectives. If the State truly wanted to create uniformity in regulation, it should have continued to use the 1999 model compact as opposed to deviating from it.

If the State, after permitting uniformity to go by the wayside, wishes to advance uniformity in regulation, it may do so by requesting each tribe adopt the NIGC MICS via compact amendments, as it recently did so with four re-negotiated compacts. These compacts included a Memorandum of Agreement (MOA) whereby the tribes agreed to implement the NIGC MICS and submit to enforcement and auditing by the State Gaming Agency. Absent arms length negotiations as noted by these recent compact amendments, the unilateral adoption of CGCC-8 is unnecessary. Moreover, the use of MOA's is proof that there is a viable alternative to addressing the State's MICS concerns outside of CGCC-8.

Pursuant to the terms of the Compact, the best and most appropriate approach to addressing the State's MICS concerns would be through compact negotiations with the Tribe—not through regulatory and political bureaucracy. Moreover, addressing the State's MICS concerns through an amendment of the Compact is the only true means of maintaining respect for tribal sovereignty, and is consistent with the State's established practice in dealing with other California gaming tribes. In the absence of respecting tribal sovereignty, the Tribe will have no choice but to seek all means of protecting and defending its interests from what the Tribe believes is a unilateral and unnecessary expansion of the State's regulatory role over tribal gaming through the proposed CGCC-8.

v. Alternatives to CGCC-8

Presently, California tribes are overwhelmingly opposed to CGCC-8. Additionally, as noted in the Detailed Response to Association Objections to Minimum Internal Control Standards (MICS) (CGCC-8), seven tribes, and the California Department of Justice-Bureau of Gambling Control, provided comments opposing the CGCC's implementation of CGCC-8 in a manner that is both inconsistent with the express written provisions of the various Compacts and in a manner that is disrespectful to the tribes themselves.[9] Both the tribes and Department of Justice made suggestions varying from No CGCC-8, to individual compact amendments and/or MOA's, legislative fixes, NIGC oversight and agreements between the State, tribes and CGCC. These alternatives are telling, and

[9] See Tribal and Department of Justice-Bureau of Gambling Control, correspondence, included in the CGCC's Detailed Response to Association Objectives to Minimum Internal Control Standards (MICS) (CGCC-8), Exhibits A-1-A-8.

demonstrate a willingness by California tribes to engage the CGCC in its MICS concerns and attempt to formulate a reasonable and acceptable means of both addressing MICS and implementing and imposing it upon themselves.

Finally, CGCC-8 provides for an unequivocal expansion of the CGCC's oversight role by impermissibly establishing State mandated MICS—which are currently within the sole regulatory authority of the Tribe's gaming agency pursuant to the Section 8.1 of the Compact. Moreover, the Tribe finds that CGCC-8 is entirely unnecessary, unduly burdensome and duplicative in light of the Tribe's adoption of the NIGC MICS in accordance with the Tribe's NIGC approved Tribal Gaming Ordinance and Section 8.1 of the Tribal-State Compact.

The Tribe therefore opposes CGCC-8 and additionally incorporates by reference those deficiencies and objections noted in the February 2008, Association Regulatory Standards Taskforce Final Report.[10] We respectfully urge the CGCC, to consider the above when advancing and considering the imposition of CGCC-8 upon the Tribe. We hope you reconsider your position and that the State immediately change course and address MICS in the only appropriate manner—through government-to-government negotiations in accordance with the IGRA.

Sincerely,

Rick Dowd, Chairman
Coast Indian Community of the Resighini Rancheria

cc: Resighini Rancheria Tribal Gaming Commission
Philip Hogen, Chairman, National Indian Gaming Commission
Jerry Brown, Attorney General, State of California
Matthew Campoy, Acting Director, Bureau of Gambling Control
Rosette & Associates, PC

[10] See Attached February 13, 2008, Association Regulatory Standards Taskforce Final Report.